Supreme Court, U.S.
FILED
96 736 SEP 12 1996
No. OFFICE OF THE CLERK

IN THE
SUPREME COURT FOR THE UNITED STATES OF AMERICA
October Term, 1996

ELLIOTT ROSADO, OMEGA FARRIS,
GARY FARRIS and SHERRY FARRIS,
Petitioners,

v.

JOSEPH V. CURTIS, JOHN E. STEELE, PATRICIA E. DORMAN, ROSLYN A. RUSSELL, JOE F. ROACH, MARGARET A. WEISS, ORLAND D. SMITH, DALE F. HART, JOHN DOE #1-10, and JANE DOE #1-10,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE 11TH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Petitioners come as private individuals as Nonlawyers
Omega Farris, Non Domestic Mail
1932 Bel Air Avenue
Orlando, Florida USA 32812

16 pp

QUESTIONS PRESENTED FOR REVIEW

1.-- Should it be applicable to all three branches of government alike so that when we read "and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution * * * ," **Article VI, clause 3,** and we consider the Congressional mandate of **5 U.S.C.A., s. 3331** which implements said Constitutional provision, and when the face of ROSADO's-FARRIS' complaint shows them to be coming pursuant to **28 U.S.C.A., s. 1746(1),** then the Constitution must be construed as a contract in contradistinction to construction in light of legislative enactment within the purview of ***OGDEN v. SAUNDERS,*** **25 US (12 Wheat.) 213, 277, 6 L.Ed. 606, 628 (1827);** ***GLASS v. THE SLOOP BETSEY,*** **3 Dall. 6, 13, 1 L.Ed. 485 (1794);** ***ABLEMAN v. BOOTH,*** **62 US (21 How.) 506, 524-525, 16 L.Ed. 169, 176 (1859);** ***CHISHOLM v. GEORGIA,*** **2 Dall. 419, 1 L.Ed. 440 (1793),** given that on the face of ROSADO's-FARRIS' complaint as a verified pleading it is shown that ROSADO-FARRIS have affirmatively established themselves as private individuals of the United States of America pursuant to **28 U.S.C.A., s. 1746(1)** which have third party beneficial interest in the Constitution as a contract as a charitable trust in constradistinction to submitting to governmental presumption that they are public individuals pursuant to **28 U.S.C.A., s. 1746(2),** ***UNITED STATES v. CRUIKSHANK,*** **92 US 542, 549-552, 23 L.Ed. 588, 590-591 (1876)?**

2.-- Given that "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time *ordain* and *establish.*" (Emphasis ours) **Article III, s. 1, Constitution for the United States of America,** and that Congress has ordained that the United States district court for Florida state, Orlando Division, be a constitutional Court

pursuant to Article III, s. 1, ***STATE v. DALLAS CITY,*** **72 Or. 337, 143 P. 1127, 1131; 28 U.S.C.A., s. 132(c);** ***WELLS v. UNITED STATES,*** **214 F.2d 380, 382 (CA5 Canal Zone 1954);** ***GLIDDEN COMPANY v. ZDANOK,*** **370 US 530, 543, 82 S.Ct. 1459, 1469, 8 L.Ed.2d 671 (1962),** and that the same can be said of the U. S. Courts of Appeals in the several states, ***OLD COLONY TRUST CO. v. COMMISSIONER,*** **279 US 716, 724, 73 L.Ed. 918, 49 S.Ct. 499, 502 (1929),** can it be said that said district court has failed to be established to exercise Article III jurisdiction, and, accepting the foregoing as true arguendo, can it be said that the failure of said district court to be established may explain its failure to rule on all the issues within the meaning of ***REYNOLDS v. STOCKTON,*** **140 US 254, 264, 265-266, 11 S.Ct.773, 775, 776, 35 L.Ed. 464, (1891),** but the failure of the 11th Circuit Court of Appeals to recognize this state of facts does not explain their failure to prevent further irreparable harm to ROSADO-FARRIS within the meaning of ROSADO's- FARRIS' Motion to Rehearing, particularly point 6 therein, and the foregoing must be considered in light of ***COOMBES v. GETZ,*** **285 US 434, 441, 52 S.Ct. 435, 436 (1932),** and "neither vested property rights nor the obligation of contracts of third persons may be destroyed or impaired." ***Ibid,*** **285 US, at 442, 52 S.Ct., at 436,** see ***CHIGAGO & NORTHWESTERN R. CO. v. WHITTON,*** **80 US (13 Wall.) 270, 286, 20 L.Ed. 571, 577 (1872)?**

3.-- Is it mandatory to prevent invidious discrimination that where fundamental rights are in issue the Constitution for the United States of America must be construed as a contract in which ROSADO-FARRIS, each and every one as private individuals, have third party beneficial interest therein in contradistinction to construction of the Constitution in light of legislative enactment in which public individuals have an interest which must be weighed against public policy considerations which give rise to the seven rules against construing the Constitution given by

Justice Brandeis in his concurring opinion, ***ASHWANDER v. TENNESSEE VALLEY AUTHORITY,* 297 US 288, 345-348, 56 S.Ct. 466, 482-484, 80 L.Ed. 688 (1936),** where while it is true that this Honorable Court "does not sit for the benefit of the particular litigants, (Citations omitted) ***RICE v. SIOUX CITY MEMORIAL PARK CEMETARY,* 349 US 70, 74, 75 S.Ct. 614, 616, 99 L.Ed. 897 (1955),** "where the issues involved reach constitutional dimensions, * * * there comes into play regard for the Court's duty to avoid decision of constitutional issues unless avoidance becomes evasion. Cf. the classic rules for such avoidance stated by Mr. Justice Brandeis in ASHWANDER v. TENNESSEE VALLEY AUTHORITY," supra, ***RICE, supra,* 349 US, at 74, 75 S.Ct., at 616-617?**

4.-- Given the circumstances of this case, in light of ROSADO's-FARRIS' Motion to Rehearing and the record as a whole, can it be said to a certainty that like any general rule, the rule that one may not claim standing to vindicate constitutional rights of some third party should not be applied where its underlying justifications are absent, ***SINGLETON v. WULFF,* 428 US 106, 49 L.Ed.2d 826, 96 S.Ct. 2868 (1976),** and in the exceptional circumstances of ROSADO-FARRIS herein the concededly injured party may rely on the constitutional rights of a third party in obtaining relief, ***MOOSE LODGE NO. 107 v. IRVIS,* 407 US 163, 32 L.Ed.2d 627, 92 S.Ct. 1965 (1972),** and that this general rule is not germane where the interests of ROSADO-FARRIS and the rights of the proposed third parties are mutually interdependent in that any fundamental right of an individual that is violated and unvindicated is the destruction of fundamental rights for all, ***CRAIG v. BOREN,* 429 US 190, 50 L.Ed.2d 397, 97 S.Ct. 451 (1976),** rehearing denied **429 US 1124, 51 L.Ed.2d 574, 97 S.Ct. 1161,** and considering that standing to litigate the rights of third parties has been allowed when enforcement of challenged restrictions against the litigant would result indirectly in the violation of

third-parties' rights. ***WARTH v. SELDIN,*** **422 US 490, 45 L.Ed.2d 343, 95 S.Ct. 2197 (1975)?**

5.-- Considering that "the judicial powers which [the Articles of Confederation] conferred upon the new federal government were of the most restricted character." ***Albert H. Putney,*** **UNITED STATES CONSTITUTIONAL HISTORY AND LAW, Chicago: Illinois Book Exchange, 1908, s. 62, p. 97,** and that "provisions [of the Articles of Confederation] included the entire grant of judicial power to the United States government prior to the adoption of the Constitution," ***Ibid,*** **s. 189, p. 305;** ***RHODE ISLAND v. MASSACHUSETTS,*** **37 US (12 Pet.) 657, 728, 743, 9 L.Ed. 1233, 1262, 1268 (1838),** is it mandatory that the Judicial Power of the Constitution for the United States of America be seen as a fundamental right secured to the supreme Court for the United States of America which may not be encumbered by the presumptions that gave rise to Justice Brandeis' concurring opinion of ASHWANDER v. T. V. A., *infra,* which mandates avoidance of Constitutional construction?

6.-- Can this Court affirm that in the instant case where fundamental rights of the individual secured by the Constitution for the United States of America are created by those state constitutions which antedate it, then a contract to secure said fundamental rights, would not leave Congress free to choose its own remedial rights to vindicate fundamental rights such as 28 U.S.C.A., s. 2106 to the exclusion of private individuals within the meaning of 28 U.S.C.A., s. 1746(1), and access to courts of an independent judiciary is a contract right, and a contract pursuant to Article III is available to all with third-party beneficial interest, and parol evidence may be necessary to show that state constitutions that antedate the Constitution for the United States of America define said fundamental rights, particularly with regard to access to courts of an independent judiciary?

7.-- S.Ct. Rule 14.4 states that, "[t]he petition for a writ of certiorari shall be as short as possible and may not exceed the page limitations set out in Rule 33," and S.Ct. Rule 33.3 mandates a 30 page limit for typographically printed documents, and can this Court affirm that this imposition violates ROSADO's-FARRIS' First Amendment right to access to a court of an independent judiciary which could be remedied by removing the page constraints on the Brief on the Merits for Petitioners, Brief on the Merits for Respondents, and the Reply Brief on the Merits?

8.-- Can this Honorable Court lose its jurisdiction to hear the instant case to give a complete remedy in accordance with the construction of the Constitution for the United States of America as a contract in contradistinction to construction in light of legislative enactment for lack of distinction between the concept of said Constitution as an instrument embodying a compact where it is said that, "The Constitution is founded upon compact, but is not itself a compact." *Roger Foster,* **COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES: Historical and Juridical, The Boston Book Company, 1896, Volume I, s. 16, p. 79,** which is suscinctly explained by its section 16 and, in particular, footnote 14 thereof, and the concept of said Constitution as a compact where it is said that, "Chief Justice Jay said that the Federal Constitution had the same effect upon the people of the United States as [an original] State Constitution upon the people of a State." *Ibid,* **s. 29, p. 109,** which is suscinctly explained by its section 29 and, in particular, footnote 4 thereof, and "The confederation was a compact between states; and its structure and powers were wholly unlike those of the national government. The constitution was an act of the people of the United States to supercede the confederation, and not to be ingrafted on it. * * * " ***MARTIN v. HUNTER'S LESSEE,* 1 Wheat. 304, 332 (1816),** and yet Justice Story decries the fact that said Constitution is a compact in his COMMENTARIES ON THE CONSTITUTION?

9.-- If this Court must determine, arguendo, that due to the nature and dignity of the instant case subsequent controversies might be more appropriately brought within the original jurisdiction of this Court because it does arise from violation of the Compact Clause, Article I, s. 10, cl. 3 of the Constitution for the United States of America, and because the destruction of ROSADO's-FARRIS' property so violates their fundamental rights as to destroy their fundamental rights too, and that the facts and circumstances of the instant case are tantamount to casus belli when the states were fully sovereign at the adoption of the Declaration of Independence and where fundamental rights had become nonexistent, then does this Court have the jurisdiction to determine within the purview of ***ILLINOIS v. CITY of MILWAUKEE,* 406 US 91, 93-94 (1972); *MISSISSIPPI v. LOUISIANA,* 113 S.Ct. 549, 552-553 (1992),** that the Common Law Court of Louisiana, Non Domestic Mail, 3527 Ambassador Caffery, Suite 32, Lafayette, Louisiana USA 70503, would be an appropriate alternative forum for said subsequent controversies?

10.-- Is it mandatory that this court rule that the denial of ROSADO's-FARRIS' motion shown, in pertinent part, in Appendix I was a violation of ROSADO's-FARRIS' First Amendment right within the purview of ***REYNOLDS v. STOCKTON, infra,*** to an explanation of how the independent judiciary comes to decision pursuant to ***RICHMOND NEWSPAPERS, INC. v. VIRGINIA, infra?***

TABLE OF CONTENTS

Page

Questions Presented for Review i
Table of Contents vii
Table of Authorities ix
Opinions Below 1
Statement of Jurisdiction 1
Constitutional Provisions, Treaties, Statutes, Rules and Regulations, Law Review Articles, and Other Authorities Involved 3
Statement of the Case 4
Reasons for Granting Writ 14
Conclusion 29
Appendix:

A. Original Complaint filed in the U. S. district court
B. U. S. district court orders (2) rendered February 27, 1995
C. Proposed Per Curiam Decision
D. Notice of Motion and Plaintiffs'-Appellants' Motion to Rehearing as a Motion to Declaratory Judgment for Clarification of the Proposed Per Curiam Decision of April 17, 1996
E. Denial of Motion aforesaid in D, supra
F. Judgment as a Final Judgment by Per Curiam Affirmation entered April 17, 1996 as signed by Matt Davidson, Deputy Clerk of the U. S. court of appeals for the 11th Circuit and sent to ROSADO-FARRIS on June 25, 1996.

G. Warranty Deed for land upon which the U. S. district courthouse is situated which Fails to satisfy the statutory requirements of 6.04 Fla. Stat. as a Deed of Cession of Jurisdiction to the United States.

H. Citation of Applicable Constitutional Provisions and Statutes.

I. Notice of Motion, and Plaintiffs'-Appellants' Motion to Strike the Defendants'-Appellees', Internal Revenue Service Employees', Answer Brief, or, In the Alternative, to Evidence the Basis Upon Which the Defendants-Appellees Have Established a Material Issue in the Record as a Speaking Motion Whose Summary Denial Constitutes a Flagrant Violation of ROSADO's-FARRIS' First Amendment Rights.

TABLE OF AUTHORITIES

ABLEMAN v. BOOTH, 62 US (21 How.) 506,
16 L.Ed. 169 (1859)..... i
ASHWANDER v. T. V. A., 297 US 288,
56 S.Ct. 466, 80 L.Ed. 688 (1936)..... iii
BATES v. LITTLE ROCK, 361 US 516,
4 L.Ed.2d 480, 80 S.Ct. 412 (1960)..... 22, 23
BUCHER v. CHESHIRE R. CO., 125 US 555,
8 S.Ct. 974, 31 L.Ed. 795 (1888)..... 19
CALIFORNIA v. ARIZONA, 440 US 59 (1979) ... 2
CAMPBELL SOUP CO. v. DIEHM,
111 F.Supp. 211 (E.D.Penn., 1952)..... 20, 28
CHIC. & N. W. R. CO. v. WHITTON,
80 US (13 Wall.) 270, 20 L.Ed. 571 (1872)..... ii
CHISHOLM v. GEORGIA, 2 Dall. 419,
1 L.Ed. 440 (1793)..... i, 15
COHENS v. VIRGINIA, 19 US (6 Wheat.) 264,
5 L.Ed. 257 (1821)..... 23, 29, 30
COOMBES v. GETZ, 285 US 434,
52 S.Ct. 435 (1932)..... ii
CRAIG v. BOREN, 429 US 190,
50 L.Ed.2d 397, 97 S.Ct. 451 (1976)..... iii, 24
DOWNES v. BIDWELL, 182 US 244,
21 S.Ct. 770, 45 L.Ed. 1088 (1901)..... 18, 19
FARMERS & MERCHANTS' BANK
v. FEDERAL RESERVE BANK, 262 US 649,
67 L.Ed. 1157, 43 S.Ct. 651 (1923)..... 27
GLASS v. THE SLOOP BETSEY, 3 Dall. 6,
1 L.Ed. 485 (1794)..... i

TABLE OF AUTHORITIES, continued

GLIDDEN COMPANY v. ZDANOK, 370 US 530,
82 S.Ct. 1459, 8 L.Ed.2d 671 (1962)..... ii
GORDON v. UNITED STATES,
117 US 697 (1864)..... 20, 21
JARROLT v. CITY of MOBERLY, 103 US 580,
26 L.Ed. 492 (1881)..... 14
LAKE COUNTY v. ROLLINS, 130 US 662,
9 S.Ct. 651, 32 L.Ed. 1060 (1889)..... 14
LEONARD v. FRANKLIN, 84 Fla. 402,
93 So. 688 (Fla. 1922)..... 14
MARTIN v. HUNTER'S LESSEE,
1 Wheat. 304 (1816)..... v
McCULLOUGH v. COMMONWEALTH
of VIRGINIA, 172 US 102, 43 L.Ed. 382,
19 S.Ct. 134 (1898)..... 27
MIDLAND NAT. BANK v. COUSINS
PROPERTIES, INC., 68 F.R.D. 427,
22 F.R.Serv.2d 1117 (N.D.Ga., 1975)..... 20, 28
MOOSE LODGE NO. 107 v. IRVIS, 407 US 163,
32 L.Ed.2d 627, 92 S.Ct. 1965 (1972)..... iii
NORTHERN PIPELINE CONST.
v. MARATHON PIPE LINE CO., 458 US 50,
102 S.Ct. 2858, 73 L.Ed.2d 598 (1982)..... 21, 22
OGDEN v. SAUNDERS, 25 US (12 Wheat.) 213,
6 L.Ed. 606 (1827)..... i, 15
OLD COLONY TRUST CO.
v. COMM'R, 279 US 716, 73 L.Ed. 918,
49 S.Ct. 499 (1929)..... ii

TABLE OF AUTHORITIES, continued

PORTO RICO SUGAR COMPANY v. LORENZO, 222 US 481, 32 S.Ct. 133 (1912)..... 26, 27
REYNOLDS v. STOCKTON, 140 US 254, 11 S.Ct.773, 35 L.Ed. 464 (1891)..... ii, 17, 23, 29, 30
RHODE ISLAND v. MASSACHUSETTS, 37 US (12 Pet.) 657, 9 L.Ed. 1233 (1838)..... iv, 20
RICE v. SIOUX CITY MEMORIAL PARK CEMETARY, 349 US 70, 75 S.Ct. 614, 99 L.Ed. 897 (1955)..... iii
RICHMOND NEWSPAPERS, INC. v. VIRGINIA, 448 US 555, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980)..... 17, 18, 23, 24
ROBB v. CONNOLLY, 111 US 624, 4 S.Ct. 544, (1884)..... 15
ROGERS v. ALABAMA, 192 US 226 (1904)..... 17
SABLE COMMUNICATIONS of CALIFORNIA, INC. v. F. C. C., 492 US 115, 109 S.Ct. 2829, 106 L.Ed.2d 93 (1989)..... 23
SINGLETON v. WULFF, 428 US 106, 96 S.Ct. 2868, 49 L.Ed.2d 826 (1976)..... iii, 16
SMITH v. STATE of ALABAMA, 124 US 465, 8 S.Ct. 564, 31 L.Ed. 508 (1888)..... 19
STATE v. DALLAS CITY, 72 Or. 337, 143 P. 1127 (S.Ct.Or., 1914)..... ii
TEXAS v. NEW MEXICO, 482 US 124 (1987) 20, 28

TABLE OF AUTHORITIES, continued

TEXAS INDUSTRIES, INC.
v. RADCLIFF MATERIALS, 451 US 630,
101 S.Ct. 2061, 68 L.Ed.2d 500 (1981)..... 19
UNION INTERCHANGE, INC.
v. ALLEN, 140 Mont. 227,
370 P.2d 492 (S.Ct.Mont., 1962)..... 15
UNITED STATES
v. BETHLEHEM STEEL COMPANY,
205 US 105 (1907)..... 26
UNITED STATES v. CRUIKSHANK, 92 US 542,
23 L.Ed. 588 (1876)..... i
UNITED STATES v. MERSKY, 361 US 431,
4 L.Ed.2d 423, 80 S.Ct. 459 (1960)..... 29
UNITED STATES v. RADDATZ, 447 US 667,
100 S.Ct. 2406, 65 L.Ed.2d 424 (1980)..... 23
WARTH v. SELDIN, 422 US 490,
95 S.Ct. 2197, 45 L.Ed.2d 343 (1975)..... iv, 16
WELLS v. UNITED STATES,
214 F.2d 380 (CA5 Canal Zone 1954)..... ii
WEST VIRGINIA STATE BOARD
of EDUCATION v. **BARNETTE,** 319 US 624,
87 L.Ed. 1628, 63 S.Ct. 1178 (1943)..... 26
WEST VIRGINIA ex rel. DYER v. SIMS,
341 US 22, 71 S.Ct. 557,
95 L.Ed. 713 (1951)..... 28
WOOD v. LOVETT, 313 US 362,
85 L.Ed. 1404, 61 S.Ct. 983 (1941)..... 27

COMES NOW, the Petitioners, ELLIOTT ROSADO, OMEGA FARRIS, GARY FARRIS and SHERRY FARRIS, hereinafter ROSADO-FARRIS, as private individuals as Nonattorneys, at all times living in the geographical boundary and general jurisdiction of Florida state, and in behalf of all similarly situated private individuals as the sovereignty of the United States of America, to request that certiorari be granted to review the denial of ROSADO's-FARRIS' **PLAINTIFFS'-APPELLANTS' MOTION TO REHEARING AS A MOTION TO DECLARATORY JUDGMENT FOR CLARIFICATION OF THE PROPOSED PER CURIAM DECISION OF APRIL 17, 1996** which was filed on the 31st day of May, 1996, hereinafter called ROSADO's- FARRIS' Motion to Rehearing, with its Notice of Motion where said motion and notice of motion are hereby incorporated herein as a reference as it will appear in ROSADO's-FARRIS' Appendix by exhibit "D", and the denial of said motion by the clerk of the United States court of appeals for the 11th Circuit is dated June 14, 1996 as shown by exhibit "E" of the Appendix herein.

OPINIONS BELOW

It is the U. S. district court order rendered February 27, 1995, shown by exhibit "B" of the Appendix herein, which was appealed to the U. S. court of appeals for the 11th Circuit where appellate jurisdiction was invoked pursuant to 28 U.S.C.A., s. 2106 that is the subject of review, and this Honorable Court may review said appellate court's denial of ROSADO's- FARRIS' Motion to Rehearing first to determine how this cause should proceed where the denial of ROSADO's-FARRIS' Motion to Rehearing was issued by the clerk of the appellate court on June 14, 1996 which is shown by exhibit "E" of the Appendix herein.

STATEMENT OF JURISDICTION

The clerk of the United States court of appeals for the

11th Circuit denied ROSADO's- FARRIS' Motion to Rehearing on June 14, 1996, and the jurisdiction of this Honorable Court is invoked pursuant to **28 U.S.C.A., ss. 1254(1), 2101(c), 2106, 2201,** and the record will show that the Respondents have no chance to prevail in light of the lower courts' refusal to rule on ROSADO's-FARRIS' controlling issues of law, and ROSADO-FARRIS are entitled to a Declaratory Judgment in the nature of Specific Performance of Contract where it is this Court's duty so to do since the vindication of fundamental rights are at stake; or, in the alternative, the jurisdiction of the supreme Court for the United States of America arises directly from the Compact Clause of the Constitution, **Article I, s. 10, cl. 3,** where the Constitution for the United States of America is in itself an interstate compact, and given that the original jurisdiction of the supreme Court for the American Union is conferred by the Constitution itself, and "[t]his jurisdiction is self-executing, and needs no legislative implementation," (Citations omitted) ***CALIFORNIA v. ARIZONA,* 440 US 59, 65 (1979),** then given the facts and circumstances herein and pursuant to **28 U.S.C.A., ss. 2106,** and **2201** this Honorable Court may fashion a federal common law remedy to construe the Constitution as a contract as opposed to construing it in light of legislative enactment; and, whichever alternative this Court may choose, "the ideal of judicial review has basically antidemocratic and antimajoritarian facets that require some justification in this Nation, which prides itself on being a self-governing representative democracy. * * * The ultimate source of authority in this Nation, Marshall said, is not Congress, not the states, not for that matter the Supreme Court of the United States. The people are the ultimate source of authority; they have parceled out the authority that originally resided entirely with them by adopting the original Constitution and by later amending it. They have granted some authority to the federal government and have reserved authority not granted it to the states or to the people *individually.* * * * Judges then are * * * *keepers* of

the covenant." *(Emphasis ours)* ***William H. Rehnquist,* "The Notion of a Living Constitution," 54 Texas L. Rev. 693, 695, 696, 698 (1976).**

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, RULES AND REGULATIONS, LAW REVIEW ARTICLES AND OTHER AUTHORITIES INVOLVED

Article I, s. 8, cl 9 14
Article I, s. 8, cl. 17 14
Article I, s. 10, cl. 3 ..... 2, 15, 20
Article III, s. 1 ..... i, ii, 14
Article VI, cl. 3 ..... i, 20
Amendment 1 ..... *passim*
Amendment 5 ..... 22, 23
Amendment 9 ..... 24, 25, 27, 28
Amendment 10 ..... 24, 25

Original Virginia Declaration of Rights,
s. 1 26
s. 2 26
s. 5 26

Title 4 U.S.C.A., s. 72 ..... 14, 17
Title 5 U.S.C.A., s. 3331 ..... i, 20
Title 28 U.S.C.A., s. 132 ii
Title 28 U.S.C.A., s. 1254 ..... 2, 15
Title 28 U.S.C.A., s. 1746 ..... i, iv, 15, 23, 26
Title 28 U.S.C.A., s. 2101 ..... 2, 15
Title 28 U.S.C.A., s. 2106 ..... iv, 1, 2, 15
Title 28 U.S.C.A., s. 2201 ..... 2, 15

Title 40 U.S.C.A., s. 255 ..... 14, 17

6.04 Fla. Stat. Anno. 14, 17
6.05 Fla. Stat. Anno. 14, 17

William H. Rehnquist, "The Notion of a Living Constitution," **54 Texas Law Review 693-706 (1976)** 2, 3
***The New Encyclopedia Britannica,* Vol. 12 (15th Ed.), 12:391** 25
Helen Hill Miller, **GEORGE MASON, Gentleman Revolutionary, The University of North Carolina Press: Chapel Hill, 1975, p. 300** ... 25
Bernard Schwartz, **THE BILL OF RIGHTS: A Documentary History, Chelsea House Publishers in association with McGraw Hill Book Company, 1971,Volume 1, p. 231**..... 25
David H. Souter, **NOMINATION OF DAVID H. SOUTER TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES: Hearings before the Committee on the Judiciary, United States Senate, 101st Cong., 2d Sess., S.Hrg. 101-1263, September 13, 14, 17, 18, and 19, 1990, pp. 54-55 (1991)** 27, 28
Albert H. Putney, **UNITED STATES CONSTITUTIONAL HISTORY AND LAW, Chicago: Illinois Book Exchange, 1908** iv

STATEMENT OF THE CASE

This action arises when on August 6, 1992, the

defendant John E. Steele, a Magistrate judge which is an Article I judge, granted an order to federal defendants Revenue Agents (employees of the U.S. government) for the purpose of seizing and levying the private real and personal properties of Omega and Sherry Farris, and the taking of real and personal properties of Gary Farris and Elliott Rosado located in the geographical jurisdiction of the Florida state, at 12737 Monte Vista Road, Clermont, Florida. Such order has exceeded the geographical jurisdiction of the federal courts areas (federal areas, exclusive jurisdiction as to U.S.A. Constitution, Article I, Section 8, Cls 17) and in which the State of Florida has not ceded the land for which to exercise exclusive legislative jurisdiction to the federal government for which an officer of the federal government can go to private property within the territorial jurisdiction of the State of Florida to act upon a private individual of the state. This action by the federal Defendant, John E. Steele, is an act that encroached upon the State of Florida's legislative jurisdiction, and said act deprived the private individuals herein of fundamental rights when such action deprived the Plaintiffs of their properties located within the geographical boundary of Florida state without a remedy found in access to a court of an independent judiciary for these private individuals suffer irreparable harm and require a complete remedy in equity and good conscience.

Furthermore, the order issued by the defendant John E. Steele, pursuant to Title 26 U.S.C.A., section 7402(a), does not have an implementing regulation under Title 26 C.F.R. Part one of the U.S. Individual Income Tax to give the force and effect of law to the statute, section 7402(a). The Supreme Court of the United States stated in ***United States v. Mersky,* 361 U.S. 431, 444-445,** that the statute is not self-executing and only together with the regulations does it have the force and effect of law. The statute, section 7402(a), does not have an implementing regulation as is required by Congressionally mandated law pursuant to Title 26 U.S.C.A., section 7805(a). The act of issuing an order

without a completed statutory scheme of implementing regulation to the statute, section 7402(a), under Part one of the U.S. Individual Income Tax constituted the taking of properties without due process of law, **5th Amendment,** against the Plaintiffs. The Revenue Agents of the Internal Revenue Service on August 11, 1992, executed the order by unlocking the front door of the Plaintiffs', Omega and Sherry Farris', private home and taking the real and personal properties of the Plaintiffs located at 12737 Monte Vista Road, Clermont, Florida, and selling the properties in a public action under the presumption that the agents of the I.R.S. had authority to enforce those sections of Title 26 U.S.C.A., sections 6201, 6301, 6321, and 6331, which were transferred by Treasury Department Order No. 12001, published in the Federal Register/ Vol. 55, No. 220/ Wednesday, November 14, 1990, which specifically states that sections 6201, 6301, 6321, and 6331 have been transfered to Title 27 C.F.R., Part 70, sections 71, 51, 141, 143, 144, 145, 148 to the Bureau of Alcohol, Tobacco and Firearms.

On January 21, 1994, the Plaintiffs filed a verified action against the defendants for taking the private properties of the Plaintiffs without authorization of Treasury Regulations, and without statutory authority to seize and levy the Plaintiffs' private properties. The Plaintiffs, through this action, tried to recover what was taken and sued for compensantory and punitive damages for injuries caused by all Defendants.

On August 19,1994, the U.S. district court granted the Plaintiffs' motion for leave to amend their complaint. The U.S. district court never warned the Plaintiffs that a dismissal was eminent.

The defendants never answered the Plaintiffs' verified complaint in that their answer should be verified under oath and when the defendants did not respond with a verified answer then it is to say that the defendants did not answer the

Plaintiffs' complaint and being an unverified answer the defendants' pleadings constituted nothing more than hearsay. On October 5, 1994, the U.S. district court notified all parties that the motion for summary judgment was before the court and to file affidavits in support or to oppose within the purview of Fed. Civ. P. Rule 56(c), (e). The Defendants did not file any affidavits to support their motion for summary judgment as the court set forth. The Plaintiffs responded with affidavits but the Plaintiffs did not oppose the motion of summary judgment. And on February 27, 1995, the U.S. district court granted dismissal to one Defendant. And summary judgment relief to the Defendants without affidavits in support of their mere allegations. This appeal arises from a final order issued February 27, 1995 by the U.S. district court for the Middle District of Florida granting dismissal for one Defendant and summary judgement without supporting affidavits in favor of all other defendants in which the decision the U.S. district court has deprived the Plaintiffs of fundamental rights secured by the United States Constitution and Congress' enactment of law, where the district court failed to dispose of all the issues presented by the Plaintiffs, in particular the Ultimate Issue of Law. The case involved an action brought in the U.S. district court against defendant agents and employees of the IRS and U.S. Magistrate Judge John E. Steele for violating the Plaintiffs' rights under the Fourth, Fifth and Eighth Amendments to the United States Constitution when the defendants acted outside their scope of authority against the Plaintiffs and deprived them of their properties without the authority of implementing regulations as mandated by Congress in Title 26 U.S.C.A., sec. 7805(a). This issue of having no implementing regulations under Title 26 C.F.R., part one of the U.S. Individual Income Tax is the controlling issue of law in this case and was never addressed by either the defendants or the court.

The U.S. district court failed to recognize its jurisdiction pursuant to Title 28 U.S.C., sections 1331, 1346(a)(1), and the Fourth, Fifth and Eighth Amendments to

the United States Constitution as invoked by the Plaintiffs when they initiated this action. The district court failed to address the ultimate issue of law, that ultimate issue being that the regulations implement the statutes pursuant to ***MERSKY, supra,*** which was presented by the Plaintiffs in this case. The Plaintiffs were deprived of their right to due process in that the decision to grant all defendants summary judgement was done on only a partial consideration of the issues and the district court never reached the controlling issue of law that the regulations implement the statutes. The U.S. district court issued the final order of February 27, 1995 granting summary dismissal to one Defendant and summary judgement to all other defendants after the court had issued an order on October 5, 1994 ordering all parties to either support or oppose the motions submitted by the defendants by affidavit pursuant to Fed. Civ. P. rule 56(c), (e). This order of October 5th constituted an order for trial by affidavit. The defendants violated this court order and failed to support their motions with any affidavits, yet the court issued its final orders granting dismissal to one defendant and granting summary judgement to all other defendants in the absence of any affidavits filed by the defendants and in violation of its own order. The Plaintiffs submitted a verified Complaint and the Plaintiffs never expressly waived the verification required of the defendants in their answer to the Plaintiffs Complaint. Throughout the course of summary judgment the defendants failed to submit affidavits to support their motion for summary judgment that they had filed and the district court set forth. At the time the court order was issued on October 5, 1994, there were no material facts in dispute and all that remained was for the court to render a decision based solely on the law. The court failed in its duty to dispose of all the issues presented by the Plaintiffs, primarily the Ultimate Issue of Law that the regulations implement the statutes. Title 5 U.S.C., s. 559 states in pertinent part that "[e]xcept as otherwise required by law, requirements or privileges relating to evidence or procedure apply equally to agencies and persons." Fed.R.Civ.P. 11 provides in pertinent part that

"[e]xcept when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit." So it appears to the Plaintiffs that 5 U.S.C., s. 559 taken in the context of Fed.R.Civ.P. 11, 8(b), (e)(2), (f) is such that they are all derogatory in nature pursuant to ANNOTATION -- EVIDENCE -- SELF-SERVING DECLARATIONS, 1 A.L.R. 39, 60, and the Fed.R.Evid. apply to this appellate proceeding for the aforementioned reasons together with the fact that Fundamental Rights are involved:

a) "The object and intent of Congress in enacting this beneficent and progressive legislation is strongly emphasized by a unique and unusual expression found in the last section of the statute, 5 U.S.C.A., s. 1011 [which is today's 5 U.S.C.A., s. 559]:

> 'No subsequent legislation shall be held to supersede or modify the provisions of this chapter except to the extent that such legislation shall do so expressly.' " ***TOM MUNG NGOW v. DULLES,* 122 F.Supp. 709, 711 (D. C. Cir. 1954).**

b) It seems to the Plaintiffs that the Defendants are bound by Title 5 U.S.C., s. 559 and Fed.R.Civ.P. 11, 8(b), (e)(2),(f) to verify their Answer to the Plaintiffs' Complaint in their individual and personal capacities when the Plaintiffs NEVER expressly waived its verification.

c) "Some evidentiary facts must be produced proving that a viable claim exists, and that a reasonable [trier of fact] could thus find for judgment on the complaint based on those facts. *See* ***CELOTEX,* 477 US at 324, [106 S.Ct. at 2553].** When, as in this case, no evidence has been produced to support the [adversary's argument], it follows that no reasonable [trier of fact] could find for judgment [in favor of the adversary], and the court must summarily rule. * * * " ***WILSON v. WILLIAMS,* 997 F.2d 348, 350-351 (7th Cir. 1993).** [A]s we have said in ***JACKSON v. DUCKWORTH,* 955 F.2d 21, 22 (7th Cir. 1992),** affidavits are evidence for

purposes of determining whether genuine issues of material fact exist." ***Ibid,*** at 351. Though ***WILSON v. WILLIAMS*** is concerned with a summary judgment procedure, its conclusions regarding the necessity of determining whether genuine issues of material fact exist pertain to the instant case because Fed.R.Evid. 802 specifically incorporates as a reference Fed.R.Civ.P. 32, 43(e).

d) "This material is, of course, unsworn hearsay, and even when admitted in a nonjudicial hearing is of a low order of probative value." ***JACKSON v. UNITED STATES,*** **428 F.2d 844, 847 (U.S.Ct.Cl. 1970).** "[M]ere hearsay lacking sufficient assurance of its truthfulness is not substantial evidence to overcome the sworn testimony of a claimant." ***McKEE v. UNITED STATES,*** **500 F.2d 525, 528 (U.S.Ct.Cl. 1974).**

e) "We have previously held that 'verified pleadings may in some circumstances be treated as affidavits in support of a motion for summary judgment.' (citations omitted) This result holds if the pleadings meet rule 56(e)'s requirement that summary judgment affidavits 'shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.' Fed.R.Civ.P. 56(e)." ***LODGE HALL MUSIC, INC. v. WACO WRANGLER CLUB, INC.,*** **831 F.2d 77, 80 (CA5 Tex. 1987).** And, the Plaintiffs note that this holding cites two cases predating the existence of the 11th Circuit. And, in ***SURKIN v. CHARTERIS,*** **197 F.2d 77 (CA5 Fla. 1952),** this court found that unopposed affidavits that affirmatively presented a party's case entitled that party to a judgment as a matter of law. For the foregoing reasons the Appellants' appeal this final orders issued on February 27, 1995, by the U.S. district court should be reversed as a matter of law and in the Light of Justice.

In ***California Bankers Association v. Shultz,*** **416 U.S. 21, 26,** The United States Department of Justice Agreed

with the Plaintiff when the Department of Justice made the statement that the statutes need an implementing regulation to give force and effect to the statutes and that the statutes without the regulation do not have the effect of law. (see as follows) ***California Bankers Association v. Shultz,* 416 U.S. 21, 26.** The Supreme Court has stated in their opinion that the statute is not self-executing, and were the Secretary to take no action whatever under his authority there would be no possibility of criminal or civil sanctions being imposed on anyone. This case says that if the Secretary of the Treasury fails to promulgate regulations for the statutes which gives the force and effect of law to the statutes then it is to say that statutes can not impose any criminal or civil penalties on the anyone. The question of law is: where is the implementing regulations under Title 26 C.F.R. part one of the U.S. Individual Income Tax for section 6201, 6301, 6321, 6331, and 7402(a) for the Internal revenue service agents to seize the Plaintiffs' private property? If the Internal Revenue Service had authority under part one of the U.S. Individual Income Tax it would show as follows; Example 1.6201-1, 1.6301-1, 1.6321-1, 1.6331-1, and 1.7402(a)-1.

In ***Dodd v. United States,* 223 F.Supp 785, 787 (DC, New Jersey, 1963)** the Supreme Court stated that for Federal Tax purposes the regulations govern. This case doesn't say the statutes govern, it says very clearly that for tax purpose the regulations govern. ***Payne v. Block,* 714 F.2d 1510(11th Cir. 1984).** In this case the 11th Circuit Court of Appeals stated that the failure of the agency to comply with the regulations is the gravamen of the original complaint. This is to say that we, the Plaintiffs, rely on this case to state the cause of action in the complaint when the Internal Revenue Service failed to comply with the regulations, where the regulations govern and not the statutes. And nowhere have the Defendants controverted the Plaintiffs that the regulations govern and not the statutes, nor have they presented the authority of the regulations under part one of the U.S.

Individual Income Tax. In ***United States v. Mersky*, 361 U.S. 431, 444-445** the Supreme Court Opinion is that the statutes are not self-executing and don't have any force of law unless they are together with the implementing regulations, nor do the regulations have any force of law without the statutes, and only the statute and the regulations together have the force and effect of law. In ***United States v. Reinis*, 794 F.2d 506-508 (9th Cir.1986)** the Court of Appeals stated that a criminal penalty can attach only upon violation of regulations promulgated by the Secretary of the Treasury. This is another confirmation that the statutes alone cannot impose penalties on anyone. In ***Wells v. United States*, 214 F.2d 380** the U.S. District Court of the Canal Zone, stated that the U.S. District Court of the Canal Zone does not have jurisdiction to hear an action under Title 28 U.S.C., section 1346(a), (1) because the U.S. District Court of the Canal Zone is an Article I court and not an Article III court. But the U.S. district court of the state has the original jurisdiction under Title 28 U.S.C., section 1346(a), (1) to hear an action for recovery of illegal collection of taxes because the U.S. district court is an Article III court. The U.S. district court, for the Middle District of Florida as an Article III court has the original jurisdiction to hear an action for the recovery of illegal tax collection.

The following statutes in Title 26 U.S.C., sections 6201, 6301, 6321, and 6331, have been transferred to Title 27 C.F.R. under part 70 by Treasury Department Order No. 12001 published in the Federal Register/ Vol. 55, No. 220/ Wednesday, November 14, 1990. Title 26 U.S.C., section 6201, has been transfered to Title 27 C.F.R.part 70, section 71, and read as Title 27 C.F.R. 70.71. Title 26 U.S.C., section 6301, has been transfered to Title 27 C.F.R.part 70, section 51, and read as Title 27 C.F.R. 70.51. Title 26 U.S.C., section 6321, has been transfered to Title 27 C.F.R.part 70, section 141, and read as Title 27 C.F.R. 70.141. Title 26 U.S.C., section 6331, has been transfered to Title 27 C.F.R.part 70, section 161, and 162, and read as Title 27 C.F.R. 70.161, 70.162. Title 26 U.S.C.A., section 7805(a)

is the authorization by Congress, which authorized the Secretary of the Treasury or the Commissioner of Internal Revenue Service to prescribe and promulgate regulations for the enforcement of any provision of Title 26 U.S.C.A. Title 26 U.S.C.A., section 7402(a) is the authorization by Congress to the Internal Revenue Sevice to use the U.S. district court for the enforcement of any provisions of Title 26 U.S.C.A., and section 7402(a) does not have an implementing regulation under Part One of the U.S. individual Income Tax to give it any force and effect of law for the Internal Revenue Service to use the U.S. district court for enforcement of collections. **Title 27 C.F.R., 70.71; Title 27 C.F.R., 70.51; Title 27 C.F.R., 70.141; Title 27 C.F.R., 70.161, 70.162.** Title 28 U.S.C.A., section 1331. Federal Question. The district court shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States. Title 28 U.S.C., section 1346(a), (1). United States as defendant. (a) The district courts shall have original jurisdiction, concurrent with the United States Claims Court, of: (1). Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal -revenue laws. Now we know that we the Plaintiffs have committed a mistake in filing this case in this U.S. district court and even in the U.S. court of Appeals because this court is not situated on ceded land evidenced by a deed of cession of jurisdiction where this court as an Article III court, or as an Article I court, can exercise exclusive federal jurisdiction and an act of juridical nature even if the land was ceded the court cannot exercise jurisdiction beyond the ground where the needful building is located within the state boundary. We only hope that this court in equity and good conscience may see a complete remedy.

REASONS FOR GRANTING WRIT

1.– "The principle is well established that where [a] Constitution expressly provides the manner of doing a thing, it impliedly forbids its being done in a substantially different way. (Citations omitted) The quoted constitutional provision is a limitation upon legislative power." ***LEONARD v. FRANKLIN,* 84 Fla. 402, 93 So. 688, 691 (Fla. 1922),** and this must apply equally to the Constitution for the United States of America. ***LAKE COUNTY v. ROLLINS,* 130 US 662, 670, 9 S.Ct. 651, 652, 32 L.Ed. 1060, 1063 (1889); *JARROLT v. CITY of MOBERLY,* 103 US (Otto) 580, 585-586, 26 L.Ed. 492, 493 (1881).**

2.– The United States district court for Florida state, Orlando Division, has failed to be established pursuant to the Congressional mandates of **4 U.S.C.A., s. 72** and **40 U.S.C.A., s. 255** which necessarily involve **6.04, 6.05, Fla. Stat.** which is evidenced by exhibit "G" of the Appendix which is attached hereto and incorporated herein as a reference such that the failure of the aforesaid Court to be established in accordance with the laws provided to implement Article III, s. 1, hereinafter called failure of the district court to be established, further deprives ROSADO-FARRIS of their fundamental rights in that it has effectively deprived them of access to courts of an independent Judiciary, as is more fully explained by ROSADO's-FARRIS' Motion to Rehearing, and Congressional legislation such as the above-mentioned federal statutes may be required to implement **Article I, s. 8, cl. 9 & 17** from a federal point of view, but the Constitution for the United States of America is self-executing from the national point of view of a private individual.

"[T]here is no valid reason why a court, if it has jurisdiction of a constitutional question, should refuse to do so merely because of discretion." ***UNION INTERCHANGE,***

INC. v. ALLEN, **140 Mont. 227, 370 P.2d 492, 496 (S.Ct.Mont., 1962),** and "[u]pon the state courts, equally with the courts of the Union, rests the obligation to guard, enforce, and protect every right granted or secured by the constitution of the United States and the laws made in pursuance thereof [,] * * * " ***ROBB v. CONNOLLY,* 111 US 624, 637, 4 S.Ct. 544, 551 (1884).,** and the supreme Court for the United States of America has jurisdiction to grant ROSADO's-FARRIS' Petition for Certiorari to the United States Court of Appeals for the Eleventh Circuit pursuant to 28 U.S.C.A., ss. 1254(1), 2101(c), 2106, 2201, or, in the alternative, pursuant to Article I, s. 10, cl. 3 this Honorable Court may fashion a federal common law remedy to construe the Constitution as a contract as opposed to construing it in light of legislative enactment given the necessity of formulating a complete remedy to vindicate the invasion of ROSADO's-FARRIS' fundamental rights and the uncontrovertible facts that the validity of the Constitution as a contract has long been established as a matter of law, ***OGDEN v. SAUNDERS,* 25 US (12 Wheat.) 213, 277, 6 L.Ed. 606, 628 (1827); *CHISHOLM v. GEORGIA,* 2 Dall. 419, 1 L.Ed. 440 (1793),** and a valid purpose to the distinction between 28 U.S.C.A., s. 1746(1) and (2) is to allow the courts to consider the fact that private individuals need a remedy derived from the Constitution construed as a contract pursuant to 28 U.S.C.A., s. 1746(1) without the burden public individuals must bear where they may have waived constitutional rights pendant the circumstances of the case and must obtain a remedy derived from the Constitution construed in light of legislative enactment pursuant to 28 U.S.C.A., s. 1746(2), where, notwithstanding 1746 and citizenship, all individuals have fundamental rights that government must respect in the exercise of governmental power directly or where administrative action comes in aid of the exercise thereof, and where ROSADO-FARRIS must rely on the invocation of statutorily created rights to obtain a remedy, their fundamental rights are not granted by the Constitution but are secured by the instrument as pre-existing,

and "[a]lthough standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal, (citation omitted), it often turns on the nature and source of the claim asserted." ***WARTH v. SELDIN*, 422 US 490, 500, 95 S.Ct. 2197, 2206, 45 L.Ed.2d 343 (1975),** and, "[i]n some circumstances, countervailing considerations may outweigh the concerns underlying the usual reluctance to exert judicial power when the plaintiff's claim to relief rests on the legal rights of third parties. (Citation omitted) In such instances, the Court has found, in effect, that the constitutional or statutory provision in question implies a right of action in the plaintiff. (Citations omitted) Moreover, Congress may grant an express right of action to persons who otherwise would be barred by prudential standing rules. Of course, Art. III's requirement remains: the plaintiff still must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants. (Citation omitted) But so long as this requirement is satisfied, persons to whom Congress has granted a right of action, either expressly or by clear implication, may have standing to seek relief on the basis of the legal rights and interests of others, and, indeed, may invoke the general public interest in support of their claim. (Citations omitted)" ***Ibid*, 422 US, at 500-501, 95 S.Ct., 2206,** and Congress has implied a Constitutional common law right of action in 28 U.S.C.A., s. 1746(1) in the circumstances of this case. ***SINGLETON v. WULFF*, 428 US 106, 124 n.3, 96 S.Ct. 2868, 2879 n.3, 49 L.Ed.2d 826 (1976).**

"It is a necessary and well-settled rule that the exercise of jurisdiction by this court to protect constitutional rights cannot be declined when it is plain that the fair result of a decision is to deny the rights. It is well known that this court will decide for itself whether a contract was made as well as whether the obligation of the contract has been impaired." (Citation omitted) ***ROGERS v. ALABAMA*, 192 US 226, 230 (1904).** So it seems to ROSADO-FARRIS that in order

to afford a complete remedy this Court must construe the Constitution for the United States of America as a contract in the instant case.

In light of **4 U.S.C.A., s. 72** which mandates that the sovereign power of the federal government must be exercised in the District of Columbia, it must be shown for the United States district court for the Middle District of Florida that Florida state has issued and recorded a " 'deed of cession of jurisdiction,' 1949 Op.Atty.Gen. 20." **6.04 F.S.A., casenote 1,** pursuant to the land upon which the district court is situated to give jurisdiction to the United States pursuant to **6.04, 6.05 Fla. Stat.** and that Congress has accepted said jurisdiction pursuant to **40 U.S.C.A., s. 255.**

"In any event, for the reasons stated in Part II of my HOUCHINS opinion, 438 US, at 30-38, 98 S.Ct., at 2605-2609, as well as those stated by THE CHIEF JUSTICE today, I agree that the First Amendment protects the public and the press from abridgment of their rights of access to information about the operation of their government, including the Judicial Branch." ***RICHMOND NEWSPAPERS, INC. v. VIRGINIA,* 448 US 555, 584, 100 S.Ct. 2814, 2831, 65 L.Ed.2d 973 (1980) (Mr. Justice STEVENS, concurring),** and the U. S. court of appeals for the 11th Circuit has deprived ROSADO-FARRIS of their fundamental First Amendment right to a decision within the purview of ***REYNOLDS v. STOCKTON, infra,*** when they denied ROSADO's-FARRIS' Motion to Rehearing; "The structural model links the First Amendment to that process of communication necessary for a democracy to survive, and thus entails solicitude not only for communication itself, but also for the indispensable conditions of meaningful communication. * * * An assertion of the prerogative to gather information must accordingly be assayed by considering the information sought and the opposing interests invaded. * * * [T]he value of access must be measured

in specifics. Analysis is not advanced by rhetorical statements that all information bears upon public issues; what is crucial in individual cases is whether access to a particular government process is important in terms of that very process." ***RICHMOND NEWSPAPERS, INC. v. VIRGINIA*, 448 US 555, 588-589, 100 S.Ct. 2814, 2833-2834, 65 L.Ed.2d 973 (1980) (Mr. Justice BRENNAN, with whom Mr. Justice MARSHALL joins, concurring in the judgment);** and the clerk of court denial of ROSADO's- FARRIS' Motion to Rehearing which is dispositive of the case denies jurisdiction to the supreme Court for the United States of America where the instant case should also be "bottomed upon a keen appreciation of the structural interest served in opening the judicial system to public inspection." ***Ibid*, 448 US, at 592, 100 S.Ct., at 2836** as a judicial system of an independent judiciary, "*See* TIME, INC. v. FIRESTONE, 424 US 448, 473-474, 476-478, 96 S.Ct. 958, 974, 975-977, 47 L.Ed.2d 154 (1976) (BRENNAN, J., dissenting) (open judicial process is essential to fulfill 'the First Amendment guarantees to the people [*individually*] of this Nation that they shall retain the necessary means of control over their institutions. . . . ')." ***Ibid*, 448 US, at 593, 100 S.Ct., at 2836.**

3.– In RICE, *supra,* the petitioner, Evelyn Rice, distinguished herself as a public individual by claiming Constitutional protection under the due process *and equal protection* clauses of the 14th Amendment, and in the ROSADO-FARRIS action herein the face of their original complaint and the record as a whole shows that they have established as uncontroverted fact that they are private individuals pursuant to 28 U.S.C.A., s. 1746(1), and "consider whether the judicial power can afford a remedy by applying inherent and fundamental principles for the protection of the individual, even though there be no express authority in the Constitution to do so [,]" ***DOWNES v. BIDWELL*, 182 US 244, 282, 21 S.Ct. 770, 785, 45 L.Ed. 1088 (1901),** and "[w]e suggest, without intending to decide,

that there may be a distinction between certain natural rights enforced in the Constitution by prohibitions against interference with them, and what may be termed artificial or remedial rights which are peculiar to our own system of jurisprudence. Of the former class are the rights to one's religious opinions and to a public expression of them, * * *; the right to personal liberty and individual property; to freedom of speech and of the press; *to free access to courts of justice, to due process of law, and to an equal protection of the laws;* to immunities from unreasonable searches and seizures, as well as cruel and unusual punishments; and to such other immunities as are indispensable to a free government. Of the latter class are the rights to citizenship, to suffrage (MINOR v. HAPPERSETT, 21 Wall. 162, 22 L.Ed. 627), and * * * [w]hatever may be finally decided by the American people as to the status of these islands and their inhabitants, -- whether they shall be introduced into the sisterhood of states or be permitted to form independent governments, -- it does not follow that in the meantime, awaiting that decision, the people are in the matter of personal rights unprotected by the provisions of our Constitution and subject to the merely arbitrary control of Congress. Even if regarded as aliens, they are entitled under the principles of the Constitution to be protected in life, liberty, and property." ***DOWNES v. BIDWELL,* 182 US 244, 282-283, 21 S.Ct. 770, 785.**

The federal Constitution must be construed in light of federal common law as a national common law. ***SMITH v. STATE of ALABAMA,* 124 US 465, 478-479, 8 S.Ct. 564, 569, 31 L.Ed. 508, 512 (1888); *BUCHER v. CHESHIRE R. CO.,* 125 US 555, 583-584, 8 S.Ct. 974, 978, 31 L.Ed. 795, 799 (1888); *TEXAS INDUSTRIES, INC. v. RADCLIFF MATERIALS,* 451 US 630, 640-641, 101 S.Ct. 2061, 2067, 68 L.Ed.2d 500 (1981),** and it seems to ROSADO-FARRIS that in determining whether federal judges have failed to perform their duty pursuant to **5**

U.S.C.A., s. 3331 implementing **Article VI, cl. 3** of the Constitution for the United States of America that such a determination requires a federal rule of decision necessary to protect uniquely federal interests, and that Congress in enacting 5 U.S.C.A., s. 3331 and 28 U. S.C.A., s. 1746 has given the courts the power to develop substantive law, and that this Court has jurisdiction to determine the question herein pursuant to **Article I, s. 10, cl. 3.**

4.-- The maker of a third-party beneficiary contract may sue without joining the beneficiaries, ***MIDLAND NAT. BANK v. COUSINS PROPERTIES, INC.*, 68 F.R.D. 427, 22 F.R.Serv.2d 1117 (N.D.Ga., 1975),** and vice versa. ***CAMPBELL SOUP CO. v. DIEHM,* 111 F.Supp. 211 (E.D.Penn., 1952),** and if this Court has ruled that in the exercise of its original jurisdiction it may enforce interstate compacts following principles of general contract law, ***TEXAS v. NEW MEXICO,* 482 US 124 (1987),** then it seems to ROSADO-FARRIS that it is mandatory to do so in the instant case given the facts and circumstances herein.

5.-- "One of the most crying evils of the confederation was, that it created no judicial power without the action of Congress, * * * " ***RHODE ISLAND v. MASSACHUSETTS,* 37 US (12 Pet.) 657, 728, 9 L.Ed. 1233, 1262, (1838),** and "Then [, after the Declaration of Independence,] the States, being independent, reserved to themselves the power of settling their own boundaries, which was necessarily a purely political matter, and so continued till 1781. Then the States delegated the whole power over controverted boundaries to Congress, to appoint and its court to decide, as judges, and give a final sentence and judgment upon it, as a judicial question, settled by a *specially appointed judicial power,* * * * * " *Emphasis ours)* ***Ibid,* 37 US at 743, 9 L.Ed. at 1268,** and "[h]ence the care with which its jurisdiction, *powers,* and duties are defined in the Constitution * * * [is] secured." ***GORDON v. UNITED STATES,* 117**

US 697, 701 (1864).

"[W]here Congress creates a substantive right, pursuant to one of its broad powers to make laws, Congress may have something to say about the proper manner of adjudicating that right. Such provisions do, in a sense, affect the exercise of judicial power, but they are also incidental to Congress' power to define the right that it has created. *No comparable justification exists, however, when the right being adjudicated is not of congressional creation." (Emphasis ours)* ***NORTHERN PIPELINE CONST. v. MARATHON PIPE LINE CO.*, 458 US 50, 83-84, 102 S.Ct. 2858, 2877-2878, 73 L.Ed.2d 598 (1982),** and it seems to ROSADO-FARRIS that no implication of inference or presumption should infect a remedy sought to vindicate the invasion of fundamental rights secured by the Constitution for the United States of America because remedial rights created by Congress to give the courts jurisdiction and power to act are invoked in the instant case.

"The Framers chose to leave to Congress the precise role to be played by the lower federal courts in the administration of justice. (Citation omitted) But the Framers did not leave it to Congress to define the character of those courts -- they were to be independent of the political branches and presided over by judges with guaranteed salary and life tenure." ***NORTHERN PIPELINE CONST. v. MARATHON PIPE LINE CO.*, 458 US 50, 64 n.15, 102 S.Ct. 2858, 2867-2868 n.15, 73 L.Ed.2d 598 (1982).**

"[T]he public-rights doctrine * * * draws upon the principle of separation of powers, and a historical understanding that certain prerogatives were reserved to the political Branches of Government. The doctrine extends only to matters arising 'between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments,' CROWELL v. BENSON, 285 US 22, 50, 52

S.Ct. 285, 292, 76 L.Ed. 598 (1932), and only to matters that historically could have been determined exclusively by those departments, *see* Ex parte BAKELITE CORP., *supra,* 279 US, at 458, 49 S.Ct., at 416. The understanding of these cases is that the Framers expected that Congress would be free to commit such matters completely to nonjudicial executive determination, and that as a result there can be no constitutional objection to Congress' employing their determination to a legislative court or an administrative agency. (Citations omitted).

"The public-rights doctrine is grounded in a historically recognized distinction between matters that could be conclusively determined by the Executive and Legislative Branches and matters that are 'inherently * * * judicial.' Ex parte BAKELITE CORP., *supra,* 279 US, at 458, 49 S.Ct., at 416. *See* MURRAY'S LESSEE v. HOBOKEN LAND & IMPROVEMENT CO., 18 How., at 280-282. For example, the Court in MURRAY'S LESSEE looked to the law of England and the States at the time the Constitution was adopted, in order to determine whether the issue presented was customarily cognizable in the courts. Ibid." ***NORTHERN PIPELINE CONST. v. MARATHON PIPE LINE CO.,* 458 US 50, 67-68, 102 S.Ct. 2858, 2869-2870, 73 L.Ed.2d 598 (1982).**

The clerk of the U. S. court of appeals for the 11th Circuit had no jurisdiction to deny ROSADO's-FARRIS' Motion to Rehearing which was dispositive of the case, and only the three judge panel possessed the jurisdiction to so in violation of the Due Process Clause, **5th Amendment.**

"It must be regarded as settled that each liberty specified in the First Amendment of the Constitution is a liberty which is secured by the due process clause of the Fifth Amendment to all persons without regard to citizenship." ***BATES v. LITTLE ROCK,* 361 US 516, 524, 4 L.Ed.2d 480, 486, 80 S.Ct. 412 (1960).**

6.-- "[F]undamental rights, even though not expressly guaranteed, have been recognized by the Court as indispensable to the enjoyment of rights explicitly defined." ***RICHMOND NEWSPAPERS, INC. v. VIRGINIA,* 448 US 555, 580, 100 S.Ct. 2814, 2829, 65 L.Ed.2d 973 (1980),** and where ROSADO-FARRIS have been deprived of access to a court of an independent judiciary pursuant to the First Amendment it must be said that ROSADO-FARRIS have been deprived of due process of law pursuant to the Fifth Amendment, and where "administrative agencies cannot finally determine 'constitutional facts.' " ***UNITED STATES v. RADDATZ,* 447 US 667, 683, 100 S.Ct. 2406, 2416, 65 L.Ed.2d 424 (1980),** it must be said that the district court exercised a jurisdiction that it did not have within the purview of ***COHENS v. VIRGINIA,* 19 US (6 Wheat.) 264, 404, 5 L.Ed. 257, 291 (1821)** which constitutes treason to the Constitution, and where the U. S. court of appeals for the 11th Circuit rendered a per curiam decision violating ***REYNOLDS v. STOCKTON,*** it must be said that said appellate court has failed to exercise a jurisdiction that it did possess within the purview of ***COHENS v. VIRGINIA, supra,*** which constitutes treason to the Constitution.

" 'Deference to a legislative finding cannot limit judicial inquiry when First Amendment rights are at stake.' LANDMARK COMMUNICATIONS, INC. v. VIRGINIA, 435 US 829, 843, 98 S.Ct. 1535, [1544], 56 L.Ed.2d 1 (1978)." ***SABLE COMMUNICATIONS of CALIFORNIA, INC. v. F. C. C.,* 492 US 115, 129, 109 S.Ct. 2829, 2838, 106 L.Ed.2d 93 (1989),** and this should apply to any legislative organ of government including Article I and Article IV courts.

Congress may have passed 28 U.S.C.A., s. 1746 to establish the discriminatory classifications of private and public individuals in recognition of important governmental objectives within the purview of ***CRAIG v. BOREN,* 429 US**

190, 97 S.Ct. 451, 50 L.Ed.2d 397 (1976) to preserve fundamental rights of private individuals where public individuals have temporarily waived their third-party beneficial interest in the Constitution for the United States of America as a contract in return for rights granted by Congress or the Constitution of the United States to protect compelling governmental interests that may necessitate restrictions on fundamental rights, and without a Constitutional common law remedy fashioned to implement the foregoing invidious discrimination due to reverse discrimination results.

"The very purpose of the First Amendment is to guarantee all facets of each right described; its draftsmen sought both to protect the 'rights of Englishmen' and to enlarge their scope. *See* BRIDGES v. CALIFORNIA, 314 US 252, 263-265, 62 S.Ct. 190, 194-195, 86 L.Ed. 192 (1941)." ***RICHMOND NEWSPAPERS, INC. v. VIRGINIA*, 448 US 555, 578 n.14, 100 S.Ct. 2814, 2828 n.14, 65 L.Ed.2d 973 (1980).** "Notwithstanding the appropriate caution against reading into the Constitution rights not explicitly defined, the Court has acknowledged that certain unarticulated rights are implicit in enumerated guarantees." ***Ibid*, 448 US, at 579, 100 S.Ct., at 2829.** "[F]undamental rights, even though not expressly guaranteed, have been recognized by the Court as indispensable to the enjoyment of rights explicitly defined." ***Ibid.*** And, it seems to ROSADO-FARRIS that the majority decision in RICHMOND was in light of the Constitution of the United States construed in light of legislative enactments. However, where the Constitution for the United States of America must be construed as a contract, given that the United States of America is the sovereignty whose power may only be exercised through its agents who have a sovereign capacity of the political corporation called the United States within which to act, then said contract was never assented to as a complete and accurate integrated contract without considering the original Virginia Declaration of Rights as extrinsic evidence to clarify the meaning of the Ninth and

Tenth Amendments to the Constitution for the United States of America, where the original Virginia Declaration of Rights "was a model for the Bill of Rights added to the U. S. Constitution 15 years later, " ***The New Encyclopedia Britannica,* Vol. 12 (15th Ed.), 12:391,** and "all of Articles III through XII were approved. The first eight of these constituted a bill of rights closely parallel to Mason's Virginia declaration of 1776. * * *

"In considerable part through the intransigence of the man who wrote the first state declaration, a bill of rights had been incorporated in the new nation's fundamental law. Mason's leading objection to the document drafted at Philadelphia had been eliminated with the active concurrence of the colleague who was its chief architect." ***Helen Hill Miller,* GEORGE MASON, Gentleman Revolutionary, The University of North Carolina Press: Chapel Hill, 1975, p. 300.** "The Virginia Declaration of Rights of 1776 is the first true Bill of Rights in the modern American sense, since it is the first protection for the rights of the individual to be contained in a Constitution adopted by the people acting through an elected convention. * * * [I]t was Mason who drafted virtually the entire Virginia Declaration of Rights and Madison who was the draftsman of the federal Bill of Rights. The work of the 1776 Virginia Convention was thus crucial in the history of the federal Bill of Rights, both as the first constitutional instrument upon which the federal Bill of Rights was modelled and as the training-ground of the man who was later to become known as the father of both the federal Constitution and its Bill of Rights." ***Bernard Schwartz,* THE BILL OF RIGHTS: A Documentary History, Chelsea House Publishers in association with McGraw Hill Book Company, 1971,Volume 1, p. 231.** Thus, in considering the original Virginia Declaration of Rights as integrated into the Constitution for the United States of America as a contract to clarify its Ninth and Tenth Amendments, it can be seen that the contractual basis for this

Court's holding that, "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, * * * , and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." ***WEST VIRGINIA STATE BOARD of EDUCATION v. BARNETTE,* 319 US 624, 638, 87 L.Ed. 1628, 1638, 63 S.Ct. 1178, 147 A.L.R. 674 (1943),** can be found in section 1 of the original Virginia Declaration of Rights, and that the fiduciary duty of the judges of the lower courts in the instant case as defined in ROSADO's-FARRIS' Motion to Rehearing is grounded in section 2 of the original Virginia Declaration of Rights which states, "That all power is vested in, and consequently derived from, the People; that magistrates are their trustees and servants, and at all times amenable to them," and the Congress recognized the Framers' original intent that there would always be private individuals who obtain the protection of government in return for their allegience to the United States of America as its sovereignty in compensation therefore and public individuals that administer government with the enactment of 28 U.S.C.A., 1746 which is predicated on section 5 of the original Virginia Declaration of Rights as a contractual stipulation. Furthermore, "[i]n BRAWLEY v. UNITED STATES, 96 US 168-173, 24 L.Ed. 622-624, the court says: 'Previous and contemporary transactions and facts may be very properly taken into consideration to ascertain the subject-matter of a contract and the sense in which the parties may have used particular terms.' It is not for the purpose of making a contract for the parties, but to understand what contract was actually made, that, in cases of doubt as to the meaning of language actually used, prior negotiations may sometimes be referred to." ***UNITED STATES v. BETHLEHEM STEEL CO.,* 205 US 105, 118 (1907),** and "[t]he question always is, What did the parties intend by the language used? When such

intention is ascertained it is ordinarily the duty of the court to carry it out." ***Ibid,* 205 US, at 119; *PORTO RICO SUGAR CO. v. LORENZO,* 222 US 481, 482, 32 S.Ct. 133, 134 (1912),** and "[l]aws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as fully as if they had been expressly referred to or incorporated in its terms. This principle embraces alike those laws which affect its construction and those which affect its enforcement or discharge. *See* OGDEN v. SAUNDERS, 12 Wheat. 213, 231, 6 L.Ed. 606, 611; VON HOFFMAN v. QUINCY, 4 Wall. 535, 550, 18 L.Ed. 403, 408." ***FARMERS & MERCHANTS' BANK v. FEDERAL RESERVE BANK,* 262 US 649, 660, 67 L.Ed. 1157, 1164, 43 S.Ct. 651 (1923); *WOOD v. LOVETT,* 313 US 362, 370, 85 L.Ed. 1404, 1407, 61 S.Ct. 983 (1941); *McCULLOUGH v. COMMONWEALTH of VIRGINIA,* 172 US 102, 124, 43 L.Ed. 382, 390, 19 S.Ct. 134 (1898),** and in this light it must be said that all state constitutions that were adopted prior to the adoption of the Constitution for the United States of America are incorporated in their terms into the Constitution as a contract; "My own personal approach to [the] derivation [of unenumerated liberty rights of the ninth amendment] begins with, I suppose, the most elementary propositions about constitutional government, but I do not know of any other way to begin. I am mindful not only of the national Constitution of 1787, but of the history of State constitution-making in that same decade. * * * So, it seems to me that the starting point for anyone who reads the Constitution seriously is that there is a concept of limited governmental power which is not simply to be identified with the enumeration of those specific rights or specifically defined rights that were later embodied in the bill. If there were any further evidence needed for this, of course, we can start with the ninth amendment. * * * Well, I think [the ninth amendment] is two things -- maybe it is more. I have no reason to question the scholarship which has interpreted one intent of the ninth amendment as simply being the protection or the preservation of the State bills of rights which *preceded*

it. Neither, quite frankly, do I find a basis for doubting that, with respect to the national bill of rights, it was something other than what it purported to be, and that was an acknowledgment that the enumeration was not intended to be in some sense exhaustive and in derogation of other rights retained." (Italics ours) ***David H. Souter,*** **NOMINATION OF DAVID H. SOUTER TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES: Hearings before the Committee on the Judiciary, United States Senate, 101st Cong., 2d Sess., S.Hrg. 101-1263, September 13, 14, 17, 18, and 19, 1990, pp. 54-55 (1991).**

7.-- ROSADO-FARRIS would have no page constraints impeding their ability to express the merits of their case in an original action of the supreme Court for the United States of America, and "HINDERLIDER v. La PLATA RIVER & CHERRY CREEK DITCH CO., *supra,* [304 US 92, 82 L.Ed. 1202, 58 S.Ct. 803 (1938)] * * * makes clear, if authority be needed, that the fact the compact questions reach us on a writ of certiorari rather than by way of an original action brought by a State does not affect the power of this Court," ***WEST VIRGINIA ex rel. DYER v. SIMS,*** **341 US 22, 30, 71 S.Ct. 557, 561, 95 L.Ed. 713 (1951),** and just as a State as maker of a third-party beneficiary contract may sue without joining the beneficiaries, ***MIDLAND NAT. BANK v. COUSINS PROPERTIES, INC.,*** **68 F.R.D. 427, 22 F.R.Serv.2d 1117 (N.D.Ga., 1975),** the third-party beneficiaries to the Constitution for the United States of America as a contract may sue without joining the several states, nor any one of them. ***CAMPBELL SOUP CO. v. DIEHM,*** **111 F.Supp. 211 (E.D.Penn., 1952),** and if this Court has ruled that in the exercise of its original jurisdiction it may enforce interstate compacts following principles of general contract law, ***TEXAS v. NEW MEXICO,*** **482 US 124 (1987),** then it seems to ROSADO-FARRIS that it is mandatory to do so in the instant case given the facts and

circumstances herein.

The United States Court of Appeals for the 11th Circuit has rendered a decision which has so far departed from the accepted and usual course of judicial proceedings and sanctioned such a departure by the United States district court for the State of Florida, Orlando Division, as to call for an exercise of this Court's power of supervision, **S.Ct. Rule 10.1 (a),** and the United States Court of Appeals for the 11th Circuit has decided a federal question in a way that conflicts with ***REYNOLDS v. STOCKTON,* 140 US 254, 11 S.Ct.773, 35 L.Ed. 464 (1891)** when it failed to prevent the district court from irreparably injuring ROSADO-FARRIS further by failing to rule on the applicability of ***UNITED STATES v. MERSKY,* 361 US 431, 4 L.Ed.2d 423, 80 S.Ct. 459 (1960)** together with the other controlling issues of law ROSADO-FARRIS presented as the record will clearly show, and to the extent that ***REYNOLDS v. STOCKTON*** has decided that a court that fails to rule on all the issues has failed to exercise its jurisdiction then this constitutes treason to the Constitution for the United States of America within the meaning of ***COHENS v. VIRGINIA,* 19 US (Wheat.) 264, 404, 5 L.Ed. 257, 291 (1821),** pursuant to **S.Ct. Rule 10.1 (c),** and ROSADO-FARRIS have been denied access to the Judiciary in violation of the doctrine of the Separation of Powers.

CONCLUSION

WHEREFORE, ROSADO-FARRIS pray that this Honorable Court, The Supreme Court for The United States of America ordained and established by Section one of the Third Article of the Constitution of the United States, exercise their constitutional equity jurisdiction upon this cause such that all controlling issues to ROSADO's-FARRIS' controversy are decided within the purview of ***REYNOLDS v. STOCKTON; COHENS v. VIRGINIA, supra,*** and for

such other and further relief in the premises as the nature of this cause and equity and good conscience may require to a complete remedy.

DECLARATION
Pursuant to Title 28 U.S.C., section 1746(1)

We, the Petitioners, Elliott Rosado, Omega Farris, and Sherry Farris, hereinafter called ROSADO-FARRIS, are capable of making this declaration as a **PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE 11th CIRCUIT,** and that We, each and every one, ROSADO-FARRIS, are personally acquainted with the facts herein stated, and state that We, each and every one, are over the age of eighteen, and the following facts are within our personal knowledge and if We are called as a witness, We, ROSADO-FARRIS, each and every one, could testify thereto. We, the ROSADO-FARRIS, declare under penalty of perjury under the laws of the United States of America, pursuant to Title 28 U.S.C., s. 1746(1), that the foregoing is true and correct to the best of our knowledge and belief. And if we are called as a witness we could testify thereto -- each and every one of us.

Signed and dated this 31 th day of October, 1996.

Omega Farris (L. S.)
Omega Farris

Sherry Farris (L. S.)
Sherry Farris

(L. S.)
Elliott Rosado
Non Domestic Mail, 1932 Bel Air Avenue,
Orlando, Florida USA 32812

APPENDIX A

UNITED STATE DISTRICT COURT
FOR THE MIDDLE DISTRICT COURT
ORLANDO DIVISION

ELLIOTT ROSADO, OMEGA FARRIS, GARY FARRIS, and SHERRY FARRIS,
Plaintiffs,

v.

JOSEPH V. CURTIS, JOHN E. STEELE, PATRICIA E. DORMAN, ROSLYN A. RUSSELL, JOE F. ROACH, MARGARET A. WEISS, ORLAND D. SMITH, DALE F. HART, JOHN DOE # 1-10, JANE DOE # 1-10,
Defendants.

CASE No. 94-59-CIV-ORL-18

JUDGE: G. KENDALL SHARP

FIRST AMENDED COMPLAINT
COMPLAINT FOR DAMAGES
CIVIL RIGHTS VIOLATIONS
WITH DEMAND THAT ALL ISSUES OF FACTS BE TRIED BY JURY
PURSUANT TO FRCP 38 (a), AND (b)

I.
JURISDICTION AND VENUE

1. This is an action for damages sustained by several

inhabitants of Florida against revenue officers of the Internal Revenue Services and other non revenue agent persons, who unlawfully signed an order to enter upon the private property of the Plaintiffs' locked house, unlawfully arrested Plaintiff Omega Farris and his wife Sherry Farris, against the Plaintiffs' will, and unlawfully took Plaintiff Omega Farris and Sherry Farris chattels from their house and loaded it into a mover services truck and has not returned all of the Plaintiffs' chattel property, and for unlawfully selling all the houses of all Plaintiffs', and against the I. R. S. District director Dale F. Hart for failure to supervise, to assure proper training of their personnel, or to implement meaningful procedures to discourage lawless official conduct or to take corrective action with respect to revenue personnel whose vicious propensities were notorious, which are sued as persons under Title 42 U.S.C., Section 1983 and operated under color of law without authority of law pursuant to Title 26 U.S.C. to lien, levy and seize in violation of Title 18 U.S.C., Sections 872, 876, 1001; Title 26 IRC Section 7214; 26 CFR, Section 301.7214-1 and 26 CFR 601.106, Rule 1.

2. This action is brought pursuant to Title 42 U.S.C., Section 1983, 1985, 1986, 1988; Title 18 U.S.C., Sections 872, 876, 1001; Title 26 U.S.C., Section 7214; 26 CFR, Section 301.7214-1; 26 CFR, Section 601.106, Rule 1; and the First, Fourth, Fifth, Eighth, and Fourteenth Amendments as well as Article I, Section 10, to the Constitution of the United States of America.

3. Plaintiffs evoke the Jurisdiction of this court pursuant to Title 28 U.S.C., Section 1331, Title 28 U.S.C., Section 1343 (a), 1, 2, 3, 4, (b) 1, 2; Title 28 U.S.C., Section 1346.

II.
PARTIES

4. Plaintiff Omega Farris and Sherry Farris, husband and wife (hereinafter Omega) are an inhabitant living in Non Domestic Mail Florida in the City of Clermont at 12737 Monte Vista Road (hereinafter premises), at all times relevant to the facts

in this complaint was living with his wife in said premises.
5. Plaintiff Gary Farris (hereinafter Gary) is an inhabitant living in Non Domestic Mail Florida in the City of Clermont at 8933 Reynold Road (hereinafter private property).
6. Plaintiff Elliott Rosado (hereinafter Rosado) is an inhabitant living in Non Domestic Mail Florida, with address Non Domestic Mail, 12373 Monte Vista Road, Clermont, Florida USA.
7. Defendant Joseph V. Curtis (hereinafter Curtis) at all times relevant to this complaint was a revenue agent, employed by IRS at all relevant time he was acting in such capacity as the agent, servant, who was the Master mind person who entered the Plaintiff Omega locked house (premises) on August 8, 1992, and or assisted other Defendants in entering the premises, took all the personal property inside the premises, and other property not belonging to Omega including tools of his trade preventing Omega from earning his livelihood. Curtis is a resident of Orange County, Florida and is being sued individually and in his official capacity.
8. Defendant Curtis at all times relevant to this complaint was a revenue agent, employed by the IRS, and at all revelant time he was acting in such capacity as the agent, servant. Curtis was the Master mind person who unlawfully without the regulations and statutes took all the real property from all of the Plaintiffs to be sold at public auction.
9. Defendant Patricia E. Dorman (hereinafter Dorman) at all times relevant to this complaint was a revenue agent, employed by the IRS, and at all revelant time she was acting in such capacity as the agent, servant. Dorman was the person that assisted Curtis in the unlawful acts and the person who was trying to extort and demand money from the Plaintiffs. Defendant Dorman is a resident of Winter Springs, Florida, and is being sued individually and in her official capacity.
10. Defendant Roslyn A. Russell (hereinafter Russell) Assistant Chief, collection Division, at all times revelant to this complaint was a revenue agent, employed by the IRS, and

without authority of law, Regulations and statutes signed and transferred all the Plaintiffs' rights to the property to other persons. Defendant Russell is a resident of Jacksonville, Florida and is being sued individually and in her official capacity.

11. Defendant Orland D. Smith (hereinafter Smith) at all times revelant to this complaint was a revenue agent, employed by the IRS, and at all revelant time he was acting in such capacity as an agent, servant. Smith was the person who assisted Curtis in the unlawful taking of the Plaintiff Omega's personal property and is the person who went to the Plaintiff Omega's house demanding money. Defendant Smith is a resident of Florida, and is being sued individually and in his official capacity.

12. Defendant Margaret A. Weiss (hereinafter Weiss) at all times revelant to this complaint was a revenue agent, employed by the IRS, and at all time she was acting in such capacity as an agent, servant. Weiss was the person who assisted Curtis in the unlawful act of demanding money, and another later time went to the house of the Plaintiff Omega demanding money. Defendant Weiss is a resident of Florida, and is being sued individually and in her official capacity.

13. Defendant Joe F. Roach (hereinafter Roach) at all times revelant to this complaint is an individual who was acting in conjunction with Curtis to purchase the Plaintiff Omega's property from Curtis. Defendant Roach is the individual that offered to purchase the property from Plaintiff Omega, prior to Curtis, in order to implicate the Plaintiff in an illegal act. Roach is the individual that in conjunction with Curtis was conspiring against the Plaintiff Omega in order to purchase one of the properties belonging to Omega from Curtis signed and delivered from Russell. Defendant Roach is a resident of Orlando, Florida, and is being sued individually.

14. Defendant John E. Steele (hereinafter Steele) at all time revelant to this complaint is a Magistrate Judge in Jacksonville, Florida, issued and signed an order for entry on premises to effect levy. The Defendant Steele without probable cause and without authority of the Regulation that

premises to effect levy. The Defendant Steele without probable cause and without authority of the Regulation that give force and effect to implement the statute of search and seizure of the IRC, in which Steele relied on. Defendant Steele is the person that without Authority of Regulation to implement the statute has caused damages to all the Plaintiffs in this complaint. Defendant Steele is a resident of Florida, and is being sued individually and in his official capacity.

15. At all times revelant hereto, Defendant Dale F. Hart as IRS District Director in Jacksonville (hereinafter Dale) who intentionally, knowingly that he and the other revenue agents was acting without the scope of their agency regulations and the statutes allow the revenue agents to seize all the Plaintiffs' properties.

16. At all times revelant hereto, Defendants "Jane" and John Does" are unknown persons who have either created policy or custom and managed, ordered, controlled, or neglected to restrain or correct the Defendants herein from committing said civil rights violations complained herein. These Defendants will be identified as their names become known to the Plaintiffs.

17. At all times revelant hereto and in all their actions described herein, Defendants Curtis, Dorman, Russell, Smith, Weiss, Roach, Steele, Dale, and Jane and John Does, were acting without authority and under color of law due to the fact that no FEDERAL REGULATIONS were listed nor evidenced, pursuant to 26 I.R.C. Section 7805 (a), which describe the particular type of tax that Omega was being made liable for by this action of assessment and the deprivation of property. Further there exists no Code Section and implementing Federal Regulation pursuant to 26 IRC Section 7805 (a) which authorizes this assessment action by the Internal Revenue Service Agents. Therefore this action of assessment and deprivation of property by Defendants was unlawful and to the damage of life, liberty and property of the Plaintiffs and in violation of Title 18 USC Section 872, and 26 I.R.C., Section 7214, and 26 C.F.R. 301.7214 and 26 CFR 601.106, Rule 1, to the I.R.S., Revenue personnel or Public

officials.

18. Furthermore all Defendants in this complaint acted without Regulations to lien, levy and seize, the Defendants Magistrate Judge Steele signed an order to seize all properties from the Plaintiffs, such order was based pursuant to Title 26 IR Code section 6331. Defendant Steele knowledgeable that the Internal Revenue Code is comprised of revenue laws from diferent revenue agencies. The section 6331 found in the IR Code pertains to the Bureau of Alcohol, Tobacco and Firearms under part 70 of the Title 27 CFR, snd Title 27 USCA section 204 Note 8a, prohibiting the Internal Revenue Service from enforcing ATF regulations and statutes. A true and accurate copy of the USCS to CFR Table I -- Authorities is attached hereto as **Exhibit "B"** and incorporated herein as reference which shows that sections 6331 and 6321 pertaint to 27 CFR part 70 and not to IRS revenue agents to enforced.

A true and accurate copy of the Title 27 USCA section 204 Note 8a, is attached hereto as **Exhibit "C"** incorporated herein as reference, and will show that the Internal Revenue Service cannot enforce ATF the Bureau of Alcohol, Tobacco and firearms the statutes.

19. A true and accurate copy of the Black's law Dictionary is attached hereto as **Exhibit "D"** incorporated herein as reference will show that Title 27 USC prohibits the internal revenue agents of the IRS from enforcing or placing a lien, levy and seizure against the Plaintiffs under sections 6321, and 6331 found in the IR Code because those particular sections pertaint to the Bureau of Alcohol, Tobacco and Firearms.

20. A true and correct copy of the Notice of Federal Tax Lien under Internal Revenue Laws is attached hereto as **Exhibit "E"** and incorporated herein as reference will show on the face of the Notice of Lien that the Internal revenue Service agents used the section 6321 to lien the Plaintiffs' properties.

21. A true and accurate copy of the Notice of Seisure is attached hereto as **Exhibit "F"** and incorporated herein as

reference will show that the agents seizure all Plaintiffs' properties under sections 6331 found in the IR Code that pertaing to the Bureau of Alcohol, Tobacco and Firearms.

22. A true and accurate copy of the Levy is attached hereto as **Exhibit "G"** and incorporated herein as reference will show that the Defendant Steele entered an order to levy and seize which show on the face of the Levy that the order was entered under the section 6331 of the IR Code which pertains to the ATF, such action was out of the scope of Defendant Steele's authority and without the subject matter jurisdiction to issue an order to the IRS agents to levy or seize any properties of the Plaintiffs.

23. A true and accurate copy of the Order for Entry on Premises to Effect Levy signed and entered by the Defendant Steele is attached hereto as **Exhibit "H"** and incorporated herein as reference is show on the face of the order, which given to the IRS agents to enforce the search in order to Levy and seize the Plaintiffs properties under a section 6331 which pertain to ATF.

24. A true and accurate copy of the Federal Register / Vol. 55, No. 220 / Wenesday, November 14, 1990 / Rule and Regulations a Treasury decision, final rule is attached hereto as **Exhibit "I"** and incorporated herein as reference. That on July 1, 1972, that ATF was established by Treasury Department Order No. 120-01 formerly Order No. 221 this Order transferred from IRS to ATF the authority of functions include the use of lien and levies in enforcement of taxes under ATF. On the second page of this Exhibit "I" show part 70-Amended that the section 6321 and 6331 is under part 70 of the Title 27 CFR.

25. A true and accurate copy of the Federal Register / vol. 57, No. 239 / Friday, December 11, 1992 / Proposed Rules is attached hereto as **Exhibit "J"** and incorporate herein as reference. This exhibit "J" will show that the IRS tried to amend section 6331 to 1.6331-1 of par 1. of income tax but Congress turned down the proposed rules which would allow the IRS to enforce 6331 under part one of income tax, part one of income tax, and threby does not have the authority of

the regulation to enforce any collections, lien, levy and seizure.26. A true and accurate copy of the Deed of Real Estate is attached hereto as **Exhibit "K"** and incorporate hereto as reference. This deed signed and executed by the Defendant Russell shows that the unlawful deprivation of property of the Plaintiffs was executed under the section 6331 shown on the face of the Deed signed by Defendant Russell to the Defendant Roach.

27. The Department of Justice can not represent all Defendant federel agents when all evidence shown and indicates that all agents and federal employee acted out the scope of their laws and regulation pursuant to 28 CFR 50.15.

III.
STATEMENT OF FACTS

28. All events depicted herein started on March 10, 1992 when Omega received a visit from Curtis demanding money and threatened to arrest Omega.

29. Defendant Curtis approximately every other week from March of 1992 was demanding money in the amount of $500,000.00 dollars and that he could work something out and forget the rest. Plaintiff Omega refused to pay him any amount.

30. Defendant Curtis stated since Omega was not going to cooperate that Curtis was going to take action against Omega and put him out of business.

31. Plaintiff Omega could not understand why Curtis was doing this to him.

32. Plaintiff Omega started communication with the main office in Atlanta and in Jacksonville but did not receive any assistance.

33. Plaintiff Omega received two Notices of Federal Tax Lien -- one was filed in the Public Records on the 4th day of May, 1992 and the other on the 11th day of May, 1992 in the amount of $214,957.67 dollars, and Five other liens were filed in the Public Records in the aggregated amount of $347,433.25 dollars. The Notice of Federal Tax Lien under

the Internal Revenue Laws that Defendant, Curtis, has filed against Plaintiff, Omega, failed to identify the tax liability pursuant to the Code of Federal Regulation 26 C.F.R. 301.6323 (F)-1(c)(2). It also failed to state the Particular kind of tax pertaining to the Plaintiff, Omega, and the Federal Regulation that gives Force and Effect to implement the validity of the lien.

34. Defendant Curtis filed a Notice of Federal Tax Lien against the Plaintiff Omega without Regulation Authority to act as stated at 37 FR 20961-20990, 38 FR 23341 and 23342, and 38 FR 30011 and 30012.

35. Defendant Curtis on December 13, 1992 Unlawfully and without Regulation of authority seized all bank accounts from Omega leaving Omega without money.

36. On August 10, 1992, Omega got home and found that Curtis and other agents had unlawfully gained entrance to Omega's home taking all of the personal property belonging to Omega and other items not belonging to Omega from inside the house and loaded it into a mover truck seizing from personal items to cash. Omega asked Curtis if he had a judgment from the Court allowing Curtis to take Omega's property and Curtis responded that Curtis did not need a judgment to do that and that Curtis was going to take all of the property from Omega and others and that Curtis was going to sell it, and that Curtis was going to arrest them. Curtis ordered two agents to take Omega and his wife in to custody and put Omega and his wife seated in a chair while the two agents with guns inside their pokets faced the detainee Plaintiff for more than three hours. During the arrest Omega requested Curtis to allow Omega's wife to use the restroom and Curtis denied Omega's wife the use of the restroom. Omega requested a second time that his wife needed to use the restroom and one of the arresting agents told Omega that if Omega would not be quiet that the agent was going to use physical force against Omega. Omega's wife asked one more time, but this time to use the telephone and Curtis responded no you may not use the phone unless you want to get beaten. At that moment, Omega and his wife

stopped asking in fear of their lives. After Curtis and his other agents finished taking everything they left.

37. Defendant Curtis unlawfully and without any authority of Regulation has taken the interest of Plaintiff Rosado that was in Omega's houses causing damages to the Plaintiff Rosado.

38. Defendant Curtis unlawfully and without any authority of Regulation has taken the property that the Plaintiff Gary, son of Omega, had at one of Omega's houses causing damages to the Plaintiff Gary.

39. Defendant Steele unlawfully and without authority of Regulation has damaged all Plaintiffs in this complaint by issuing an order to Curtis to make search and seizure of all properties and in violation prusuant to Title 26 U.S.C. Section 7403 (a). Defendant Steele knew that the Notice of Federal Tax Lien can not be enforced until the Revenue Agent obtains a judgment from the U. S. District Court by filing a civil action in the U. S. District Court to enforce the lien of the United States. No judgment was ever filed and no civil action was ever filed by the revenue agents in District Court in which Defendant Steele has probable cause to issue an order for entry on the premises to effect levy. The unlawful act committed by the Defendant Steele has caused damages to all Plaintiffs in this complaint.

40. FIRST CAUSE! All Plaintiffs suffered emotional and monetary punishment in violation of Title 42 U.S.C. Section 1983 by the unreasonable actions of the Defendants on August 11, 1992 by depriving all the Plaintiffs of their property and Omega for depriving him and his wife, liberty and property without due process of law.

41. SECOND CAUSE! Plaintiffs suffered emotional punishment in violation of the Title 42 U.S.C. Section 1985 when the Defendants Revenue Agents, in conspiracy with Steele and Roach, non-agents, acted by the unreasonable actions to deprive the Plaintiffs of their property on the day of August 11, 1992.

42. THIRD CAUSE! Plaintiffs suffered emotional and monetary punishment in violation of Title 42 U.S.C. Section 1986 when Revenue Agents and Steele knowingly acted to

take someone's property without a judgment. They knew that would constitute a violation of due process of law. Defendant Steele could have prevented it, but did nothing to prevent the commission of the unlawful acts, and instead aided to the commission of the unlawful acts.

43. FOURTH CAUSE! Plaintiffs' Fifth and Fourteenth Amendment rights to due process were violated by Defendants when they entered the premises without a warrant and took possession of the premises and/or allowed intruders to take possession of personal and other persons' property.

44. FIFTH CAUSE! Plaintiffs suffered both physical, and emotional cruel and unusual punishment in violation of the Fifth and Fourteenth Amendment by the unlawful and unreasonable actions of the Defendants on August 11, 1992, by depriving Plaintiffs of all of their property without the authority of the Federal Regulations to implement lien, levy and seizure.

45. SIXTH CAUSE! Plaintiffs' substantive rights to life, liberty, and pursuit of happiness were denied by Defendants when they organized and were allowed to organize as a standing army in time of peace, and invaded the Plaintiffs Omega's premises by troops which were kept up, trained, and controlled by Defendant Curtis and the I.R.S. as used without the exceptions of riot, insurrection, or invasion, in violation of Article I, Section 10, Subsection (3).

46. SEVEN CAUSE! Plaintiffs subtantive rights to property and pursuit of happiness were deprived and violated when all of the defendants in this complaint acted without the regulations that gives force and effect to section 6331 to levy and seize the Plaintiffs' properties. The Plaintiffs will show substantial evidence beyond reasonable doubt as follow,

1. On Friday, December 11, 1992, a Proposed Rules was published in the Federal Register to amend that levy and distraint from 26 CFR part 301. section 6331 to 26 CFR part 1. section 6331 which will read as follows, 26 CFR 1.6331-1, this particular regulation would give the authority to the IRS to levy and distrain from a taxpayer. This particular part 1., and section 6331 never was passed in effect by Congress and

this is reflected on the Income Tax Proposed Regulation published in 1992, 1993, and 1994 that the IRS does not have regulations to take, levy or seize the Plaintiffs' properties, and in support of this paragraph the Plaintiffs show to this Court as exhibit "G" incorporated herein as reference containing five pages, the proposed regulation.

2. Part 1. of Title 26 CFR of income tax is the part that authorized the IRS to enforce the IRS revenue laws lien, levy and seizure. The IRS is lacking of statutes and regulations for the IRS or any agents employeed by the IRS to levy and seize the Plaintiffs properties.

PENDANT CAUSE OF ACTION

47. All allegations and exhibits set forth in paragraph 1 through 46 are incorporated herein by reference.

48. Defendants Curtis, other Defendant Agents are parties to one or more contracts authorized by I.R.S. employer and employees between themselves and the Treasury Department.

49. Defendants Steele and revenue agents were in violation of their authorized contracts pursuant to the Constitution of the United States of America, on the day of August 11, 1992, when the Defendants revenue agents went to the premises and unlawfully entered without legal authority.

50. Defendants actions violated Article I, Section 2, Section 6, Section 9, Section 11, Section 12, Section 17, Section 23 of the Constitution of Florida. This Court has pendent jurisdiction to hear and adjudicate these claims.

51. All the defendants named in this complaint have 20 calendar days to answer the Plaintiffs complaint in their individual capacities, and 60 days to answer the Plaintiffs complaint in their official capacities.

WHEREFORE Plaintiffs demand judgment against the Defendants jointly and severally, as follows:

a) A declaratory Judgment pursuant to the Federal Rules of Civil Procedure, Rule 57, That the sections 6321 and 6331 found in the IR Code used by the defendants to lien, and seize all the Plaintiffs properties pertain to the Bureau of Alcohol,

Tobacco and Firearms known as ATF under part 70 of the 27 CFR. (Exhibit "B" attached to this complaint and incorporate herein as reference.)

b) A declaratory judgment pursuant to the Federal Rules of Civil Procedure, Rule 57, that the Internal Revenue Service can not enforce the Bureau of Alcohol, Tobacco and Firearms revenue laws pursuant to Title 27 USCA section 204 8a. (Exhibit "C" incorporate herein as reference and attached to this complaint).

c) A declaretory judgment pursuant to the Federal rules of Civil Procedure, Rule 57, that the Department of the Treasury by a Treasury decision transferred from the Internal Revenue Service (IRS) to ATF the functions associated with enforced tax collections activities. The exhibit "I" incorporated herein as reference and attached to this complaint will show that section 6321 and 6331 that the Internal Revenue Service used to seize the Plaintiffs properties pertain to the ATF under Title 27 CFR part 70. (Exhibit "I" is composed of 6 pages).

d) A declaratory judgment pursuant to the Federal Rules of Civil Procedure, Rule 57, that the order sign by the defendant Steele was out of the scope of his jurisdiction to issue such order because section 6331 pertains to ATF and not to IRS. (Exhibit "B", "C", "I", and "J" are attached to this complaint.)

e) A declaratory judgment pusuant to the Federal Rules of Civil Procedure, Rule 57, that the action of the defendant revenue agent Russell of signing and transfering title of properties from the Plaintiffs to the defendant Roach under section 6331 was out of the scope of defendant Russell employment, rules and regulations, jurisdiction because 6331 pertain to ATF part 70 of Title 27 CFR, and that thet transfer of title of properties shall be void and given back to the Plaintiffs.

f) A declaratory judgment pursuant to the Federal Rules of Civil Procedure, Rule 57, that the Notice of Federal Tax Lien under Internal Revenue Laws section 6321 filed by the defendant Curtis was an action outside the scope of his employment, rules regulations because Exhibit "A", "B", "I",

and "J" show that the section 6321 found in the IR Code pertain to the ATF part 70 of the 27 CFR, and that all Notice of Federal Tax Lien shall be removed immediately.

g) A declaratory Judgment pursuant to Federal Rules of Civil Procedure, Rule 57, that the actions of Defendants Revenue Agents and Defendant Steele on August 11, 1992, constituted an unlawful forcible entry and seizure of Plaintiff Omega's house and chattel property and the property of other Plaintiffs in this complaint, in violation of the United States Constitution, Fourth, Fifth, and Fourteenth Amendment;

h) A declaratory judgment pursuant to the Federal Rules of Civil Procedure, Rule 57, that the use of force by the Defendants Revenue Agents on August 11, 1992 at Plaintiff Omega's house was the use of a standing army in time of peace as prohibited by Article I, Section 10, of the United States Constitution and Article I, Section 2, Section 6, Section 9, Section 11, Section 12, Section 17, and Section 23 of the Florida Constitution;

i) A declaratory judgment pursuant to the Federal Rules of Civil Procedure, Rule 57, that to deny the Plaintiff Omega the use of their food, house, vehicles, money, work tools, and equipment for over one year following August 11, 1992, and during the winter, amounted to cruel and unusual punishment in violation of the Eight Amendment to the United States Constitution.

j) A declaratory judgment pursuant to the Federal Rules of Civil Procedure, Rule 57, that to deny the Plaintiffs Rosado and Gary of their use of their house, work tools, and equipment for over one year following August 11, 1992, during the winter, amounted to cruel and unusual punishment in violation of the Eight Amendment to the United States Constitution.

k) A declaratory judgment pursuant to the Federal Rules of Civil Procedure, Rule 57, under this Court's pendant jurisdiction that Plaintiffs retain actual possession of the premises because of the use of force in the seizure thereof;

l) A declaratory judgment pursuant to the Federal Rules of Civil Procedure, Rule 57, that the exhibit "J" incorporate in

this complaint and all other exhibits incorporated in this complaint that the IRS agents acted without authorities of the statutes and the regulations to levy and seize the Plaintiff's properties.

m) As compensatory and consequential damages as follows;

1- Defendant Curtis the sum of $1,500,000.00 dollars in his individual capacity and the sum of $1,500,000.00 dollars in his official capacity.

2- Defendant Dorman the sum of $1,500,000.00 dollars in her individual capacity and the sum of $1,500,000.00 dollars in her official capacity.

3- Defendant Roach the sum of $1,500,000.00 dollars in his individual capacity.

4- Defendant Russell the sum of $1,500,000.00 dollars in her individual capacity and the sum of $1,500,000.00 dollars in her official capacity.

5- Defendant Smith the sum of $1,500,000.00 dollars in his individual capacity and the sum of $1,500,000.00 dollars in his official capacity.

6- Defendant Weiss the sum of $1,500,000.00 dollars in her individual capacity and the sum of $1,500,000.00 dollars in her official capacity.

7- Defendant Steele the sum of $1,500,000.00 dollars in his individual capacity and the sum of $1,500,000.00 dollars in his official capacity.

8- Defendant Dale the sum of $1,500,000.00 dollars in his individual capacity and the sum of $1,500,000.00 dollars in his official capacity.

9- Defendant John and Jane Doe # 1-10 the sum of $1,500,000.00 dollars each defendant. in their individual capacities and the sum of $1,500,000.00 dollars in their official caoacities.

m) As punitive damages as follows;

10- Defendant Curtis the sum of $1,500,000.00 dollars in his individual capacity and the sum of $1,500,000.00 dollars in his official capacity.

11- Defendant Dorman the sum of $1,500,000.00 dollars in her individual capacity and the sum of $1,500,000.00 dollars

in her official capacity.12- Defendant Roach the sum of $1,500,000.00 dollars in hi individual capacity.
13- Defendant Russell the sum of $1,500,000.00 dollars in her individual capacity and the sum of $1,500,000.00 dollars in her official capacity.
14- Defendant Smith the sum of $1,500,000.00 dollars in his individual capacity and the sum of $1,500,000.00 dollars in his official capacity.
15- Defendant Weiss the sum of $1,500,000.00 dollars in her individual capacity and the sum of $1,500,000.00 dollars in her official cpacity.
16- Defendant Steele the sum of $1,500,000.00 dollars in his individual capacity and the sum of $1,500,000.00 dollars in his official capacity.
17- Defendant Dale the sum of $1,500,000.00 dollars in his individual capacity and the sum of $1,500,000.00 dollars in his official capacity.
18- Defendant John and Jane Doe # 1-10 the sum of $1,500,000.00 dollars for each defendants in their individual capacities and the sum of $1,500,000.00 dollars for each defendants in their official capacities.
n) The costs and disbursements of this action;
o) All attorney's fees incurred in prosecuting this action pursuant to Title 42 U.S.C. Section 1988;
p) The right to amend this complaint as needed;
q) Such other and further relief as to the Court seems proper.
Date: July 25, 1994.
Trial By Jury is Hereby Demanded pusuant to Federal Rules of Civil Procedures, Rule 38 (a), (b).

/s/ Elliott Rosado, In Propria Person
/s/ Omega Farris, In Propria Persona
/s/ Gary Farris, In propria persona
/s/ Sherry Farris, In Propria Persona

STATE OF FLORIDA)
) ss: **VERIFICATION**
COUNTY OF ORANGE)

We, Omega Farris, Sherry Farris, Gary Farris and Elliott Rosado, Plaintiffs in the attached complaint for Damages, do declare under penalty of perjury under the laws of the United States of America, and pursuant to Title 28 U.S.C. Section 1746(1), that the foregoing is true and correct to the best of our knowledge and belief.

/s/ Omega Farris
/s/ Sherry Farris
/s/ Gary Farris
/s/ Elliott Rosado

Sworn to before me, a Notary Public, in my presence this 25 day of July, 1994.

/s/ Jack Morden
Notary Public

JACK MORDEN
Notary Public, State of Florida
My Comm. Expires Feb. 15, 1998
No. CC 348603
Bonded Thru Official Notary Service

TABLE I -- AUTHORITIES
USCS TO CFR

USCS	CFR
26 USCS--Continued	
Title 26 Sections	**27 CFR Parts**
6321	**27 Part 70**
6331-6343	**27 Part 70**
7401	**27 Part 70**
7402	**Does not have an mplementing regulation in Part 70 of 27 CFR or in Part 1 of 26 CFR**
7403	**27 Part 70**
7601, 7606, 7608, 7610	**27 Part 70**
7602	**27 Parts 170, 296**

EXHIBIT "B"
(ONE PAGE)

Received Mar 29, 1994

UNITED STATES CODE ANNOTATED

Title 27
Intoxicating Liquors

1994

Cumulative Annual Pocket Part

Replacing 1993 pocket part in back of 1927 bound volume

Includes the Laws of the
103rd CONGRESS, FIRST SESSION (1993)

For close of Notes of Decisions
See page III

For Later Laws and Cases
Consult
USCA
Interim Pamphlet Service

WEST PUBLISHING CO.
ST. PAUL, MINN.

EXHIBIT "C"
(TWO PAGES)

27 Section 204 Note 8 **INTOXICATING LIQUORS**

*
*
*

8a. Bureau of Internal Revenue

The Bureau of Internal revenue is not authorized to enforce this chapter nor to compel obedience to an order suspending basic permit of wholesale liquor dealer, and therefore its view of the legal effect of such a suspension order is not material in proceeding in Circuit Court of Appeals to review such an order. *Strauss v. Berkshire, C.A.8, 1943,* 132 F.2d 530.

*
*
*

EXHIBIT "C"

LAW DICTIONARY

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern

By
HENRY CAMPBELL BLACK, M. A.

SIXTH EDITION
BY
THE PUBLISHER'S EDITORIAL STAFF

Coauthors
JOSEPH R. NOLAN
Associate Justice, Massachusetts Supreme Judicial Court
and
JACQUELINE M. NOLAN-HALEY
Associate Clinical Professor,
Fordham University School of Law

Contributing Authors

M. J. CONNOLLY
Associate Professor (Linguistics),
College of Arts & Sciences, Boston College

STEPHEN C. HICKS
Professor of Law, Suffolk University
Law School, Boston, MA

MARTINA N. ALIBRANDI
Certified Public Accountant, Bolton, MA

ST. PAUL, MINN.
WEST PUBLISHING CO.
1990

EXHIBIT "D"
(TWO PAGE)

*
*
*

Internal Revenue Code (I. R. C.). That body of law which codifies all federal tax laws including income, estate, gift, excise, etc. taxes. Such laws comprise Title 26 of the U. S. Code, and are implemented by the Internal Revenue Service and through it by Treasury Regulations; Revenue Rulings, etc. Because of the extensive revisions to the tax statutes that occurred with the Tax Reform Act of 1986, Title 26 of the U. S. Code is now known as the Internal Revenue Code of 1986.

Internal Revenue Service. The Internal Revenue Service (I.R.S.) is responsible for administering and enforcing the internal revenue laws, except those relating to alcohol, tobacco, firearms, explosives, and wagering. It is a part of the Department of the Treasury. Basic I.R.S. activities include providing taxpayer service and education; determination, assessment, and collection of internal revenue taxes; determination of pension plan qualification and exempt organization status; and preparation and issuance of rulings and regulations to interpret the provisions of the Internal Revenue Code.

*
*
*
*

FORM 668 (Y)
Department of the Treasury - Internal Revenue Service

NOTICE OF FEDERAL TAX LIEN UNDER INTERNAL REVENUE LAWS

District: Jacksonville, FL Serial Number: 599227123

As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, notice is given * * * *

Name of Taxpayer: OMEGA FARRIS
Residence: 12737 MONTE VISTA RD
CLERMONT, FL 34711-8415

IMPORTANT RELEASE INFORMATION: With respect to each assessment listed below, unless notice of lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
941	03/31/88	59-3070544	11/04/91	12/04/01	13222.66
941	06/30/88	59-3070544	11/04/91	12/04/01	14102.19
941	09/30/88	59-3070544	11/04/91	12/04/01	12984.13
941	12/31/88	59-3070544	11/18/91	12/18/01	12648.97
941	03/31/89	59-3070544	11/04/91	12/04/01	18107.99
941	06/30/89	59-3070544	11/04/91	12/04/01	13160.35
*					
*					
*					
940	12/31/90	59-3070544	11/04/92	12/04/02	8742.50

EXHIBIT "E"
(TWO PAGE)

Place of Filing:
CLERK OF CIRCUIT COURT
LAKE COUNTY
TAVARES, FL 32778 **Total** 190604.16

This notice was prepared and signed at Jacksonville, FL, on this, the 11th day of May, 1992.

Signature: for J. CURTIS Title: Revenue Officer

EXHIBIT "E"
(TWO PAGE)

FORM 668 (Y)
Department of the Treasury - Internal Revenue Service

NOTICE OF FEDERAL TAX LIEN UNDER INTERNAL REVENUE LAWS

District: Jacksonville, FL Serial Number: 599224966

As provided by sections 6321, 6322, and 6323 of the Internal Revenue Code, notice is given * * * *

Name of Taxpayer: OMEGA FARRIS
Residence: 12737 MONTE VISTA RD
CLERMONT, FL 34711-8415

IMPORTANT RELEASE INFORMATION: With respect to each assessment listed below, unless notice of lien is refiled by the date given in column (e), this notice shall. on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ended (b)	Identifying Number (c)	Date of Assess-ment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
941	03/31/88	59-3070544	11/04/91	12/04/01	13210.66
941	06/30/88	59-3070544	11/04/91	12/04/01	14102.19
941	09/30/88	59-3070544	11/04/91	12/04/01	12984.13
941	12/31/88	59-3070544	11/18/91	12/18/01	12648.97
941	03/31/89	59-3070544	11/04/91	12/04/01	18107.99
941	06/30/89	59-3070544	11/04/91	12/04/01	13160.35
941	09/30/89	59-3070544	11/04/91	12/04/01	12776.24
941	12/31/89	59-3070544	11/04/91	12/04/01	11982.63
*					
*					
*					
940	12/31/89	59-3070544	11/04/91	12/04/01	12185.58

EXHIBIT "E"
(TWO PAGE)

Place of Filing:

CLERK OF CIRCUIT COURT
LAKE COUNTY
TAVARES, FL 32778 **Total** 197245.29

This notice was prepared and signed at Jacksonville, FL, on this, the 04th day of May, 1992.

Signature: for J. CURTIS Title: Revenue Officer

EXHIBIT "E"
(TWO PAGE)

Department of the Treasury
Internal Revenue Service
Form 2433

NOTICE OF SEIZURE

Name and Address: Omega & Sherry Farris
12737 Monte Vista Rd.
Clermont, FL 34711

Under the authority of section 6331 of the Internal Revenue Code, and by virtue of a levy from the District Director of Internal Revenue of the district shown below, I have seized the property below for nonpayment of past due internal revenue taxes.

Due from: Omega & Sherry Farris
12737 Monte Vista Rd.
Clermont, FL 34711
Amount: $389, 503.22
Internal Revenue District: Jacksonville, FL

Description of property:

*
*
*

Signature of Revenue Officer making seizure: /s/ (illegible)
Address: 1040 Woodcock Rd., Suite 100
Orlando, FL 32803
Date: 8/11/92
Signature of accompanying employee: /s/ V. H. Baird
Address: 1040 Woodcock Rd., Suite 100
Orlando, FL 32803
Date: 8/11/92

EXHIBIT "F"
(TWO PAGE)

Department of the Treasury
Internal Revenue Service
Form 2433

NOTICE OF SEIZURE

Name and Address: Omega & Sherry Farris
12737 Monte Vista Rd.
Clermont, FL 34711

Under the authority of section 6331 of the Internal Revenue Code, and by virtue of a levy from the District Director of Internal Revenue of the district shown below, I have seized the property below for nonpayment of past due internal revenue taxes.

Due from: Omega & Sherry Farris
12737 Monte Vista Rd.
Clermont, FL 34711
Amount: $389, 503.22
Internal Revenue District: Jacksonville, FL

Description of property:

*
*
*

Signature of Revenue Officer making seizure: /s/ J. Curtis
Address: 1040 Woodcock Rd., Suite 100
Orlando, FL 32803
Date: 8/11/92
Signature of accompanying employee: /s/ R. Broughton
Address: 1040 Woodcock Rd., Suite 100
Orlando, FL 32803
Date: 8/11/92

EXHIBIT "F"
(TWO PAGE)

Form 668-B Department of the Treasury -- Internal Revenue Service

LEVY

Due From: Eric E. Lutes, as Nominee of
Omega & Sherry Farris
12737 Monte Vista Road
Clermont, Florida 34711

Originating Internal Revenue District: Jacksonville, FL

Kind of Tax	Tax Period Ended	Date of Assess.	Taxpayer I. D.	Unpaid Bal.	Statutory Additions	Total
1040	12/31/88	10/11/91	420-52-5763	$33,030.13	$5,098.69	$ 38,128.82
*						
*						
*						
		Total amount due				$ 389,503.22

The amounts shown above are now due, owing, and unpaid to the United States from the above taxpayer for internal revenue taxes. Notice and demand have been made for payment. Chapter 64 of the Internal Revenue Code provides a lien for the above tax and statutory additions. Section 6331 of the Code authorizes collection of taxes by levy on all property or rights to property of a taxpayer, except property that is exempt under Code section 6334. Therefore, under the provisions of Code 6331, so much of the property or rights to property, either real or personal, as may be necessary to pay the unpaid balance of assessment shown, with additions provided by law, including fees, costs, and expenses of this levy, are levied on to pay the taxes and additions.

Dated at Orlando, Florida, August 10, 1992.

Signature of Revenue Officer: /s/ J. Curtis
Telephone Number: (407) 648 - 6201
Date: August 10, 1992

EXHIBIT "G"
(TWO PAGE)

Form 668-B Department of the Treasury -- Internal Revenue Service

LEVY

Due From: Omega & Sherry Farris
12737 Monte Vista Road
Clermont, Florida 34711

Originating Internal Revenue District: Jacksonville

Kind of Tax	Tax Period Ended	Date of Assess.	Taxpayer I. D.	Unpaid Bal.	Statutory Additions	Total
1040	12/31/88	10/11/91	420-52-5763	$33,030.13	$4,228.29	$ 37,258.42
1040	12/31/89	10/11/91	420-52-5763	30,833.25	3,920.64	34,753.89
1040	12/31/90	10/11/91	420-52-5763	68,612.20	9,144.73	77,756.93
*						
*						
*						
		Total amount due				$ 149,769.24

The amounts shown above are now due, owing, and unpaid to the United States from the above taxpayer for internal revenue taxes. Notice and demand have been made for payment. Chapter 64 of the Internal Revenue Code provides a lien for the above tax and statutory additions. Section 6331 of the Code authorizes collection of taxes by levy on all property or rights to property of a taxpayer, except property that is exempt under Code section 6334. Therefore, under the provisions of Code 6331, so much of the property or rights to property, either real or personal, as may be necessary to pay the unpaid balance of assessment shown, with additions provided by law, including fees, costs, and expenses of this levy, are levied on to pay the taxes and additions.

Dated at Orlando, Florida, June 1, 1992.

Signature of Revenue Officer: /s/ J. Curtis
Telephone Number: (407) 648 - 6201
Date: June 1, 1992

EXHIBIT "G"

Filed August 6, 1992

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN THE MATTER OF THE TAX INDEBTEDNESS OF	)	
Omega Farris and Sherry Farris 12737 Monte Vista Rd. Clermont, Florida 34711	)	Docket No.: 92-0174 M

ORDER FOR ENTRY ON PREMISES
TO EFFECT LEVY

Joseph Curtis, a Revenue Officer of the United States Internal Revenue Service, has filed an application requesting authorization for him and/or other designated Internal Revenue Service personnel to enter the premises located at 12737 Monte Vista Rd., Clermont, Florida 34711, in order to seize property in satisfaction of unpaid Federal taxes. The Court finds, on the basis of the application and supporting affidavit, that there is probable cause to believe that property or rights to property of Omega Farris and Sherry Farris, which are subject t levy by the United States, are located on or within the premises described, it is

ORDERED that Revenue Officer Joseph Curtis and/or other designated Internal Revenue Service personnel are authorized to enter the premises described and to make such search as is necessary in order to levy and seize. In making this search and seizure, however, such Internal Revenue Service personnel are directed to enter the premises during business hours or the daytime, and within ten days of this Order, computed in accordance with Federal Rules of Civil Procedure 6 (a), and to make reasonable

EXHIBIT "H"
(TWO PAGE)

entries thereafter to effecturate any disposition of seized property. A return stating what property has been seized shall be filed with the Court.

DONE AND ORDERED at Jacksonville, Florida, this 6th day of August, 1992.

/s/ John E. Steele
UNITED STATES MAGISTRATE JUDGE

EXHIBIT "H"

Federal Register / Vol. 55, No. 220 / Wednesday, November 14, 1990 / Rules and Regulations

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 19, 24, 25, 70, 170, 179, 194, 197, 250, 270, 275, 285, 290, and 296

(T. D. ATF - 301)

Change in Responsibility for Enforced Collection of Certain Alcohol, Tobacco, and Firearms Taxes

ACENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.
ACTION: Treasury decision, final rule.

SUMMARY: This Treasury decision will transfer from the Internal Revenue Service (IRS) to ATF the functions associated with enforced collection of delinquencies of the special (occupational) tax, the domestic excise tax on distilled spirits, wine, malt beverages, tobacco products, cigarette papers and tubes, and the firearms tax imposed by subtitle E of the Internal Revenue Code. Furthermore, certain procedural and administrative rules are being adopted from IRS regulations in 26 CFR 301 to ATF regulations in 27 CFR part 70. In addition, changes in part 70 are being made to reflect amendents made to 26 U.S.C. 6651 and 6656 by the Omnibus Budget Reconciliation Act, Public Law 101-239.
EFFECTIVE DATE: October 1, 1990.

EXHIBIT "I"
(SIX PAGE)

*
*
*

PART 70-- [AMENDED]

Par. 12. The authority citation for part 70 is revised to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331-6343, 6401-6404, 6407, 6423, 6501-6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656, 6657, 6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601-7606, 7608-7610, 7622, 7623, 7653, 7805.

Par. 13. Part 70 is amended by redesignating the sections in the left-hand column below as the sections in the right-hand column:

on the property subject to the security interest and amounts paid by the holder of the lien or security interest to repair the property. Such reasonable costs also include the amounts paid by the holder of the lien or security interest in a leasehold to the lessor of the leasehold to preserve the leasehold subject to the lien or security interest. Accordingly, the amount of the lien or security interest which is protected is increased by the amounts so expended by the holder of the lien or security interest.

(d) Satisfaction of liens. The amounts described in paragraph (a)(6) of this section include expenditures incurred by the protected holder of a lien or security interest to discharge a statutory lien for State sales taxes on the property subject to the lien or security interest and the sales tax lien have priority over a Federal tax lien. Accordingly, the amount of the lien or security interest is increased by the amounts so expended by the holder of the lien or security interest even though under local law the holder of the lien or security interest is not subrogated to the rights of the holder of the State sales tax lien. However, if the holder of the lien or security interest is subrogated, within the meaning of s. 70.144 (b) of this part, to the rights of the holder of the sales tax lien, the holder of the lien or security interest will also be entitled to any additional protection afforded by 26 U.S.C. 6323 (i)(2).
(26 U.S.C. 6323)

*
*
*

*
*
*

s. 70.150 Release of lien or discharge of property.

*
*
*

EXHIBIT "I"

*
*
*

Seizure of Property for Collection of Taxes

s. 70.161 Levy and distraint.

(a) *Authority to levy--* (1) *In general.* If any person liable to pay any tax neglects or refuses to pay the tax within 10 days after notice and demand, the regional director (compliance) or Chief, Tax Processing Center who initiated the assessment (or, on that official's request, any other regional director (compliance) or the Chief, Tax Processing Center) may proceed to collect the tax by levy, provided the taxpayer has been furnished the notice described in s. 70.162(a) of this part. The regional director (compliance) or the Chief, Tax Processing Center may levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to the taxpayer. The regional director (compliance) or the Chief, Tax Processing Center may also levy upon property with respect to which there is a lien provided by 26 U.S.C. 6321 for the payment of the tax.

*
*
*

12-11-92
Vol. 57 No. 239
Friday
December 11, 1992
federal register

EXHIBIT "J"
(FIVE PAGE)

58760 Federal Register / Vol. 57, No. 239 / Friday, December 11, 1992 / Proposed Rules

*
*
*

DEPARTMENT OF TREASURY
Internal Revenue Service
26 CFR Part 301 [GL-709-88]
RIN 1545 - AM70

Levy and Distraint
AGENCY: Internal Revenue Service, Treasury.
ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains a proposed regulatory amendment regarding the authority to collect taxes by means of levy and distraint. The Technical and Miscellaneous Revenue

58761
Federal Register / Vol. 57, No. 239 / Friday, December 11, 1992 / Proposed Rules

Act of 1988 (TAMRA), amended section 6331 of the Internal Revenue Code concerning the collection of tax by means of levy in several respects.

*
*
*

Explanation of Provisions

Some minor changes are proposed to s. 301.6331-1. The first change relates to section 6332(c), which was enacted by section 6236(e)(1) of TAMRA and which provides that banks may not surrender funds to the Service until 21 days after a levy on those funds is served. *Prop. reg. s. 1.6331-1(a)(1) reflects this change* by providing that a levy

on a bank account applies not only to those funds on deposit at the time the levy is made, but also to any interest that accrues on those deposits during the 21 day waiting period.

*
*
*

EXHIBIT "J"

*
*
*

EXHIBIT "J"

*
*
*

EXHIBIT "J"

BOOK 1246 PAGE 2450

DEED OF REAL ESTATE

THIS DEED is made this 24th day of August, A. D. 1993, by the District Director, Jacksonville District, Internal Revenue Service, hereinafter called the grantor, by virtue of a levy issued against property of, and a sale conducted to collect unpaid taxes due the United States payable by:

OMEGA FARRIS AND SHERRY FARRIS
12737 Monte Vista Road
Clermont, Florida 34711.

WHEREAS the grantor, through his duly authorized Internal Revenue Officer, seized the property hereinafter described and, after giving public notice of the time and place of sale in the manner and form required by statute, offered said property for sale under sealed bid on February 17, 1993, and in accordance with Title 26, United States Code, Sections 6331 through 6342, said grantor sold said property for the sum of Eighty-Eight Thousand One Hundred Twenty-Three Dollars and Fifty-five Cents ($88,123.55), that being the highest bid for same, to:

JOE F. ROACH
1820 Gerda Terrace
Orlando, Florida 32804,

hereinafter called the grantee;

AND WHEREAS, the period for redeeming said property having elapsed and the original Certificate of Sale as executed pursuant to Title 26, United States Code, Section 6338 (a), having been delivered to the grantor as required by statute;

NOW WITNESSETH, that the grantor, in

consideration of the sum of money so paid as aforesaid, receipt of which is hereby acknowledged:

1. Does quitclaim unto the said grantee all the estate, right, title, and interest which the said OMEGA FARRIS AND SHERRY FARRIS had on and after the tax assessment date of October 11, 1991, when the federal tax lien of the United States for unpaid taxes did attach to such estate, right, title, and interest, as recorded by notices of federal taxs liens filed April 30, 1992 and May 14, 1992, in and to all that certain parcel of land in Lake County, Florida, more particularly described as follows:

Lot 13, LAKE MONTE VISTA SUBDIVISION, in Section 33, Township 22 South, Range 25 East, as recorded in Plat Book 28, pages 16-18, Public Records of Lake County, Florida.

SUBJECT TO Restrictions of record.

SUBJECT TO Easements of record.

EXHIBIT "K"
(THREE PAGE)

BOOK 1246 PAGE 2451

2. Does discharge by virtue of this sale and deed the above-described parcel of land from the aforesaid federal tax liens, and any other federal tax liens recorded thereafter and prior to the recording of this deed, saving and reserving, however, the full force and effect of said tax liens against and upon all other property and rights to property, whether real or personal, to which said tax liens attach.

TO HAVE AND TO HOLD said described property unto said grantee and his heirs and assigns forever, as fully and absolutely as the said grantor can or should quitclaim by

virtue of said levy and the laws of the United States relating thereto.

IN WITNESS WHEREOF, the said grantor has hereunto set his hand and seal, the day and year first above written.

DISTRICT DIRECTOR
Jacksonville District

BY: /s/ ROSLYN A. RUSSELL
Assistant Chief, Collection Division
Internal Revenue Service
400 West Bay Street
Jacksonville, Florida 32202

Signed, sealed and delivered
in the presence of:
/s/ Patricia A. Groth
/s/ Jacqueline Fitzpatrick

STATE OF FLORIDA)
) ss:
COUNTY OF DUVAL)

Before me, an officer duly authorized in the State and County above named to take acknowledgments, this day personally appeared ROSLYN A. RUSSELL, to me well known and well known by me to be the person who executed the foregoing instrument as Assistant Chief of the Collection Division, Jacksonville District, Internal Revenue Service; and she acknowledged before me that she executed the same on behalf of the DISTRICT DIRECTOR, Jacksonville District, Internal Revenue Service, pursuant to a lawful delegation of authority, and for the purpose therein expressed.

EXHIBIT "K"

WITNESS my hand and official seal at Jacksonville, County and State aforesaid, this 24th day of August A. D., 1993.

/s/ Jacqueline Fitzpatrick
Notary Public
My Commission Number: CC142537
My Commission Expires: October 15, 1995
Bonded Thru Troy Fein Insurance, Inc.

This Instrument was prepared by:
Jackie Gibbs
Internal Revenue Service
400 West Bay Street; Stop 5710
Jacksonville, Florida 32202

EXHIBIT "K"

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
Filed 95 Feb 27 PM 3:37

ELLIOT ROSADO, OMEGA FARRIS, SHERRY FARRIS, & GARY FARRIS
Plaintiffs,

v. CASE NO. 94-0059-CIV-ORL-18

JOSEPH V. CURTIS, PATRICIA E. DORMAN, ROSLYN A. RUSSELL, JOE F. ROACH, MARGARET A. WEISS, ORLAND D. SMITH, DALE F. HART, JOHN DOE # 1-10, & JANE DOE # 1-10,
Defendants.
_____/

ORDER

Elliott Rosado, Omega Farris, Gary Farris, and Sherry Farris (plaintiffs) bring this action pursuant to 42 U.S.C. ss. 1983, 1985, 1986, and 1988, 18 U.S.C. ss. 872, 876, and 1001, and 26 U.S.C. s. 7214 against Joseph V. Curtis (Curtis), Patricia E. Dorman (Dorman), Roslyn A. Russell (Russell, Joe F. Roach (Roach), Margaret A. Weiss (Weiss), Orland D. Smith (Smith), Dale F. Hart (Hart), and various John Does and Jane Does, alleging violations of the First, Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Plaintiffs also raise claims

under state law. Curtis, Dorman, Russell, Roach, Weiss, Smith, and Hart (defendants) filed a motion to dismiss, or in the alternative, motion for summary judgment. Plaintiffs responded in opposition to the motion. Based on a review of the case file and relevant law, the court grants summary judgment in favor of defendants.

I. Facts

Curtis, Dorman, Russell, Weiss, Smith and Hart are employees of the Internal Revenue Service (IRS). In April of 1992, Curtis, a revenue officer, was assigned the task of securing the delinquent tax liabilities of Omega Farris and Sherry Farris. In accordance with his assignment, Curtis caused to be filed Notices of Federal Tax Lien with the Clerk of Circuit Court of Lake County, Florida and with the County Comptroller of Orange County, Florida on or about April 30, 1992, May 4, 1992, and May 11, 1992. In addition, on May 4, 1992, Curtis issued a Notice of Intent to Levy to Omega Farris and Sherry Farris with regard to their tax liabilities. On June 24, 1992, Curtis seized the personal residence of Omega Farris and Sherry Farris located at 12737 Monte Vista Road, Clermont, Florida and personally served a Notice of Seizure on Sherry Farris with regard to the residence which was seized.

On August 6, 1992, Curtis presented an Application of Revenue Officer to Enter Premises to Effect Levy with a memorandum in support to Magistrate Judge John E. Steele (Magistrate Judge Steele) and executed an affidavit in support of the application before Magistrate Judge Steele. Subsequently, Magistrate Judge Steele issued an Order for Entry on Premises to Effect Levy which allowed Curtis or other designated IRS personnel to enter the premises at 12737 Monte Vista

Road, Clermont, Florida "and to make such search as is necessary in order to levy and seize." (Doc. 173, Ex. 4.) On August 11, 1992, Curtis, three revenue officers, and three IRS special agents went to the residence located at 12737 Monte Vista Road. After a locksmith opened the door, Curtis, the revenue officers, and the IRS special agents entered the house, seized certain items, and inventoried the items seized. While Curtis and the other officers were at the residence, Omega Farris and Sherry Farris returned to the residence. Subsequently, on August 11, 1992, Curtis seized a truck which belonged to Omega Farris.

Sometime later, Omega Farris and Sherry Farris filed for bankruptcy. After the IRS obtained an order lifting the automatic stay in the bankruptcy case, the IRS sold Omega Farris's truck on January 27, 1993. On February 17, 1993, the IRS sold the residence to Roach. The Deed of Real Estate which deeded the property to Roach was signed by Russell as Assistant Chief of the Collection Division of the IRS located in Jacksonville, Florida. On January 29, 1993, the personal property which had been seized was sold at public auction. The proceeds from the sale of truck, residence, and personal property were applied to the delinquent tax liabilities of Omega Farris and Sherry Farris.

II. Legal Discussion

A. Standard for Summary Judgment

Summary judgment is authorized if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *accord Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). "[T]he substantive law will identify which facts are material. Only disputes over facts

that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Anderson*, 477 U.S. at 248. The moving party bears the burden of proving that no genuine issue of material fact exists. *Celotex Corp. V. Catrett*, 477 U.S. 317, 324-25. In determining whether the moving party has satisfied its burden, the court considers all inferences drawn from the underlying facts in a light most favorable to the party opposing the motion, and resolves all reasonable doubts against the moving party. *Anderson*, 477 U.S. at 255; *see Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986). The moving party may rely solely on his pleadings to satisfy this burden. *Celotex*, 477 U.S. at 323-24; Fed. R. Civ. P. 56(c). "[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party. If the evidence is merely colorable or is not significantly probative, summary judgment may be granted." *Anderson*, 477 U.S. at 249-50 (citations omitted).

B. 18 U.S.C. ss. 872, 876 and 1001 and 26 U.S.C. s. 7214

Plaintiffs apparently bring this action pursuant to sections 872, 876, and 1001 of Title 18 of the United States Code. However, the court has been unable

to locate authority which would imply a civil cause of action for violations of these federal criminal code provisions. Therefore, a private right of action does not exist for plaintiffs' claims brought under ss. 872, 876, and 1001. *See Federal Sav. and Loan Ins. Corp. v. Reeves*, 816 F.2d 130, 137 (4th Cir. 1987) (finding no basis to imply a civil cause of action from 18 U.S.C. s. 1001); *Williams v. McCausland*, 791 F. Supp. 992 (S.D.N.Y. 1992). In addition, plaintiffs

may not bring a claim for damages pursuant to 26 U.S.C. s. 7214 until after a criminal conviction under the section. *See Brunswasser v. Jacob*, 453 F. Supp. 567, 572-73 (W.D.Pa. 1978), *aff'd*, 605 F.2d 1194 (3d Cir. 1979).

C. 42 U.S.C. s. 1983

Plaintiffs bring this action pursuant to s. 1983. Defendants assert that plaintiffs' complaint fails to state a claim for which relief can be granted under s. 1983. To maintain an action under s. 1983, plaintiffs must show a deprivation of rights, privileges, or immunities secured by the Constitution or laws of the United States and that the conduct complained of was committed by a person acting under color of state law. *Bendiburg v. Dempsey*, 909 F.2d 463, 468 (11th Cir. 1990), *cert. denied*, 500 U.S. 932 (1991). Because plaintiffs' action involves federal officials acting under color of federal law, plaintiffs fail to state a claim under s. 1983. *See Walker v. Secretary of the Treasury, I.R.S.*, 713 F. Supp. 403, 409 (N.D.Ga. 1989); *Church of Human Potential, Inc. v. Vorsky*, 636 F. Supp. 93, 95-06 (D.N.J. 1986) (stating that action of IRS employee taken pursuant to federal law cannot form the

basis of a s. 1983 claim; and finding that the mere filing of a federal tax lien in a state office does not constitute state action because the state is merely a passive agent of the federal government in maintaining records of such liens); *Young v. I.R.S.*, 596 F. Supp. 141, 145 (N.D.Ind. 1984) (noting that actions of IRS officials, even if beyond the scope of their officials duties, are acts done under color of federal law and not state law, thus making s. 1983 inapplicable); *Komasinski v. I.R.S.*, 588 F. Supp. 974, 978 (N.D.Ind. 1984) (stating that IRS employees involved in assessment of penalty and seizure of van were acting under federal law, and thus, holding s. 1983 inapplicable).

D. 42 U.S.C. ss. 1985 and 1986

Plaintiffs also bring this action pursuant to 42 U.S.C. ss. 1985 and 1986. Although the complaint does not indicate which subsection within s. 1985 applies to plaintiffs' claim, plaintiffs allege a conspiracy to deprive them of their property. Consequently, the court construes plaintiffs' complaint as an attempt to state a claim under s. 1985(3). *See* 42 U.S.C. s. 1985(3) (1988) (referring to conspiracy to deprive persons of rights or privileges). However, plaintiffs fail to sufficiently allege the existence of a conspiracy to interfere with civil rights or present facts to support such a claim. In addition, plaintiffs fail to allege a class-based discriminatory motive on the part of the conspirators. Accordingly, plaintiffs fail to state a claim for relief under s. 1985(3). *See Lucero v. Operation of Birmingham*, 954 F.2d 624, 627 (11th Cir. 1992) (identifying the elements of a cause of action under s. 1985(3) to

include (1) a conspiracy; (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws; and (3) an act in furtherance of the conspiracy; (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States; and stating that the second element requires a showing of a racial or otherwise class-based, invidious discriminatory animus behind the conspirator's action); *Kaylor v. Fields*, 661 F.2d 1177, 1184 (8th Cir. 1981). Further, because a cause of action under 42 U.S.C. s. 1986 is dependent on a valid claim under s. 1985, the court dismisses plaintiffs' claim under s. 1986. *See id.; Morast v. Lance*, 631 F. Supp. 474, 479 (N.D.Ga. 1986, *aff'd*, 807 F.2d 926 (11th Cir. 1987).

E. Claims under Article I, Section 10, Clause 3 and the First and Eighth Amendments

Plaintiffs assert that their rights under the Eighth Amendment were violated. However, plaintiffs do not allege facts to support such a claim within the complaint nor do plaintiffs argue this issue in their response to the motion for summary judgment. Plaintiffs reliance on the Eighth Amendment is inappropriate because defendants' allegedly unconstitutional acts did not occur after a formal adjudication of guilt. *See City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983) (quoting *Ingraham v. Wright*, 430 U.S. 651, 671-72 n.40, stating that "the State does not acquire the power to punish with which the Eighth Amendment is concerned until after it has secured a formal adjudication of guilt in accordance

with due process of law."). Therefore, plaintiffs' claim under the Eighth Amendment fails to state a claim for relief. In addition, plaintiffs' claim that their rights under the First Amendment were violated fails to state a claim for relief because plaintiffs fail to present facts to support such a claim.

The court notes that plaintiffs assert a violation of Article I, Section 10, Clause 3 of the United States Constitution as it pertains to organizing a standing army in times of peace. The court finds this claim wholly without merit.

F. Sovereign Immunity

Plaintiffs have sued the IRS employees in both their individual and official capacities seeking damages and declaratory relief. A suit against the IRS employees in their official capacities is, in essence, a suit against the United States. *See Gilbert v. DaGrossa*, 756 F.2d 1455, 1458-60 (9th Cir. 1985) (noting that sovereign immunity cannot be avoided by naming officers and employees of the United States as defendants). The United States is immune from suit unless it has expressly waived its immunity and has consented

to suit. *See United States v. Shaw*, 309 U.S. 495, 500-01 (1940). Although 28 U.S.C. s. 1346(a)(1) provides for an action against the United States for allegedly erroneous or illegally assessed taxes, s. 1346(a)(1) has been interpreted to apply to tax refund cases. *See Schon v. United States*, 759 F.2d 614, 617 (7th Cir. 1985). Further, s. 1346(a)(1) requires the taxpayer to pay the assessment before challenging its validity in district court. *See id.; Frasier v. Hegeman*, 607 F. Supp. 318, 322 (N.D.N.Y. 1985). Plaintiffs do not

seek a refund in this action but instead seek damages. Moreover, although the United States has waived its immunity with regard to some causes of action under the Federal Tort Claims Act (FTCA), 28 U.S.C. ss. 2671-2680, the FTCA specifically excludes any claim arising in respect of the assessment or collection of any tax. *See* 28 U.S.C. s. 2680(c) (1988); *see also Young v. I.R.S.*, 596 F. Supp. at 147 (noting that the United States has specifically reserved its immunity with regard to claims arising out of tax assessment and collection). Thus, sovereign immunity bars plaintiffs' action against the IRS employees in their official capacities.

G. Bivens Action

Plaintiffs claim that the defendants, acting under color of law, deprived them of their constitutional rights and seek damages for the alleged deprivation. Consequently, plaintiffs' complaint may be construed as seeking to raise a *Bivens* claim against the IRS employees in their individual capacities. *See Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388, 392-97 (1971) (recognizing a cause of action for damages for unconstitutional conduct committed by a federal official acting under color of law). Defendants argue that plaintiffs fail to state a claim under *Bivens*, or in the alternative, that the federal defendants are entitled to qualified immunity.

A number of courts have dismissed *Bivens* actions brought against IRS agents for tax assessment and collection activities. *See Vennes v. Unknown Number of Unidentified Agents,* 26 F.3d 1448, 1453 (8th Cir. 1994), *cert. denied,* 115 S. Ct.

721 (1995); *McMillen v. United States Dep't of Treasury,* 960 F.2d 187, 190-91 (1st Cir. 1991) (noting that Congress has provided taxpayers with the right to sue for a tax refund under 28 U.S.C. s. 1346(a)(1) and 26 U.S.C. s. 7422, and the ability to contest the validity of tax liens under 28 U.S.C. s. 2410); *Wages v. I.R.S.,* 915 F.2d 1230, 1235 (9th Cir. 1990), *cert. denied,* 498 U.S. 1096 (1991); *see also Baddour, Inc. v. United States,* 802 F.2d 801, 808 (5th Cir. 1986); *Cameron v. I.R.S.,* 773 F.2d 126, 129 (7th Cir. 1985). In the present case, plaintiffs' claims stem from the IRS employees' activities in assessing taxes, filing notices of federal tax lien, levying against the property of Omega Farris and Sherry Farris, and selling the property. Accordingly, to the extent that plaintiffs bring this actoin against the IRS employees for their tax assessment and collection activities, the court declines to create a *Bivens* remedy. *See Schweiker v. Chilicky,* 487 U.S. 412, 423 (1988) (stating that "[w]hen the design of a Government program suggests that Congress has provided what it considers adequate remedial mechanisms for constitutional violations that may occur in the course of its administration, we have not created additional *Bivens* remedies."); *Vennes,* 26 F.3d at 1454 (noting that Congress has provided specific and meaningful remedies for taxpayers challenging overzealous tax assessment and collection activities).

The court further notes that a number of courts have declined to recognize a *Bivens* claim for asserted Fifth Amendment violations. *See National Commodity & Barter Ass'n v. Gibbs,* 886 F.2d 1240, 1248 (10th Cir. 1989) (finding it inappropriate to recognize a *Bivens* remedy with

respect to claims that IRS

employees violated the Fifth Amendment and various provisions of the Internal Revenue Code); *Tonn v. United States*, 847 F. Supp. 711, 717-18 (D. Minn. 1993), *aff'd sub nom. Tonn v. Forsberg*, 27 F.3d 1356 (8th Cir. 1994), *cert. denied*, 63 U.S.L.W. 3518 (1995); *Hefti v. McGrath*, 784 F. Supp. 1426, 1431 (E.D. Mo. 1992). In addition, plaintiffs' claim under the Fourteenth Amendment is inapplicable in a *Bivens* action. *See Hefti*, 784 F. Supp. at 1431 (stating that the Fourteenth Amendment has no application where the constitutional violations are alleged to have been committed by federal officers). However, because plaintiffs claim that an unlawful search and seizure occurred in violation of their consitutional rights, the court will address below plaintiffs' Fourth Amendment claim in the *Bivens* context. *See GM Leasing Corp. v. United States*, 429 U.S. 338, 360 (1977).

H. Qualified Immunity

The federal defendants assert that they are entitled to qualified immunity. Government officials performing discretionary functions are entitled to immunity for civil damages absent evidence of conduct violating clearly established statutory or constitutional rights of which a reasonable person would have known. *See Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). To establish a qualified immunity defense, the defendants must first show that at the time the alleged acts occurred, they were acting within their discretionary authority. *See Courson v. McMillian*, 939 F.2d 1479, 1487 (11th Cir. 1991). Curtis states, through affidavit, that the actions he took with regard to Omega Farris and Sherry Farris were in his official capacity as an IRS

revenue officer and in an effort to collect taxes assessed against and owing by Omega Farris and Sherry Farris. The court finds that Curtis meets his burden to show that he was acting within his discretionary authority. In addition, the court notes that the record evidences that Russell was acting within her discretionary authority in signing the Deed of Real Estate which deeded the property to Roach. However, the remaining federal defendants fail to meet this burden. Although Curtis's affidavit refers to other revenue officers and special agents working with him, Curtis does not identify these IRS employees by name. The remaining federal defendants do not present evidence that they were acting within their discretionary authority. Instead, the defendants argue that plaintiffs fail to show that they acted outside the scope of their authority. Nevertheless, under the Eleventh Circuit's test for qualified immunity, the initial burden remains with the defendant asserting qualified immunity to show that he was acting within his discretionary authority at the time the alleged acts occurred. *See id.* However, the court notes that the record lacks evidence of any actions taken by these defendants. Because Curtis and Russell meet their burden, the burden shifts to the plaintiffs to show that Curtis and Russell violated clearly established law. *See id.*

In response to the motion for summary judgment, plaintiffs assert that the defendants deprived them of their property under color of law. Plaintiffs appear to argue that defendants levied and seized their property without authority and that the code provision concerning levy and distraint, 26 U.S.C. s. 6331, has no implementing regulation. However, plaintiffs fail to show that Curtis and Russell

violated clearly established law. *See Yalkut v. Genignani,* 873 F.2d 31, 35 (2d Cir. 1989) (noting that the Internal Revenue Code provides for collecting assessed taxes by levy pursuant to 26 U.S.C. s. 6331 and that the authority to levy had been delegated to defendant IRS agents through 26

C.F.R. s. 301.6331-1). Further, as noted below, the record shows that Curtis obtained a court order prior to entering the residence. Accordingly, Curtis and Russell are entitled to qualified immunity.

Moreover, plaintiffs fail to show a deprivation of their constitutional rights. At various times within plaintiffs' complaint, plaintiffs claim that Curtis and others unlawfully entered their property or entered their residence without a warrant. Thus, plaintiffs claim that their rights under the Fourth Amendment were violated. However, the record shows that Curtis applied for and received an Order for Entry on Premises to Effect Levy which allowed Curtis or other designated IRS personnel to enter the premises located at 12737 Monte Vista Road and to make such search as necessary to levy and seize. Accordingly, Curtis's and the other unknown IRS employees' actions in entering the premises did not violate plaintiffs' rights under the Fourth Amendment. *See GM Leasing*, 429 U.S. at 360 (holding that IRS agents should have obtained a warrant before forcible entry where IRS sought to levy and seize property). Furthermore, plaintiffs do not present evidence indicating that the search was unreasonable.

Finally, the court notes that plaintiffs have sued Roach, an individual, claiming that he acted in conjunction with the IRS employees to deprive them of their property. In plaintiffs' response to the motion for summary judgment,

plaintiffs allege that Roach, working with the IRS, tried to induce Omega and Sherry Farris into an illegal act. Although the record shows that Roach purchased the property from the IRS, plaintiffs fail to present evidence of any unconstitutional conduct on the part of the IRS and Roach.

I. Pendent State Claims

When a district court dismisses all federal claims

before trial, it is within the court's discretion to exercise pendent jurisdiction over remaining state law claims. Consequently, the court declines to exercise pendent jurisdiction over plaintiffs' state law claims. *See Rice v. Branigar Org., Inc.*, 922 F.2d 788, 792 (11th Cir. 1991).

III. Conclusion

The court finds that a private right of action does not exist for plaintiffs' claims brought under 18 U.S.C. s. 872, 876, and 1001. In addition, plaintiffs may not bring a claim for damages pursuant to 26 U.S.C. s. 7214 until after a criminal conviction under the section. Further, plaintiffs fail to state a claim for relief under 42 U.S.C. s. 1983, 1985, 1986, and 1988 and with regard to plaintiffs' claims brought under the First and Eighth Amendments. Moreover, the court finds plaintiffs' claim of a violation of Article I, Section 10, Clause 3 of the United States Constitution wholly without merit. The court finds that sovereign immunity precludes the action against the IRS employees in their official capacities. To the extent that plaintiffs

bring a *Bivens* action against the IRS employees in their individual capacities, the court declines to recognize a *Bivens* action against the IRS employees for their tax assessment and collection activities, and for claims brought under the Fifth and Fourteenth Amendment. Although the court recognizes a *Bivens* remedy for asserted Fourth Amendment violations, the court finds that Curtis is entitled to qualified immunity and that plaintiffs fail to show a deprivation of their constitutional rights. Because no federal claims remain in this action, the court declines to exercise pendent jurisdiction over plaintiffs' state law claims. The court grants summary judgment in favor of all defendants, (Doc. 171.), and instructs the clerk of the court to enter judgment accordingly.

It is SO ORDERED in Orlando, Florida, this 27th day

of February 1995.

/s/ G. KENDALL SHARP
United States District Judge

Copies to all counsel of record

15

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
Filed 95 Feb 27 PM 3:37

ELLIOT ROSADO, OMEGA FARRIS, SHERRY FARRIS, & GARY FARRIS
Plaintiffs,

v. CASE NO. 94-0059-CIV-ORL-18

JOSEPH V. CURTIS, JOHN E. STEELE, PATRICIA E. DORMAN, ROSLYN A. RUSSELL, JOE F. ROACH, MARGARET A. WEISS, ORLAND D. SMITH, DALE F. HART, JOHN DOE # 1-10, & JANE DOE # 1-10,
Defendants.
_____/

ORDER

Elliott Rosado, Omega Farris, Gary Farris, and Sherry Farris (collectively referred to as plaintiffs) bring this action pursuant to 42 U.S.C. ss. 1983, 1985, 1986, and 1988, 18 U.S.C. ss. 872, 876, and 1001, and 26 U.S.C. s. 7214 against

Joseph V. Curtis (Curtis), John E. Steele (Magistrate Judge Steele), Patricia E. Dorman (Dorman), Roslyn A. Russell (Russell), Joe F. Roach (Roach), Margaret A. Weiss (Weiss), Orland D. Smith (Smith), Dale F. Hart (Hart) (collectively referred to as defendants), and various John Does and Jane Does, alleging violations of the First, Fourth, Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Plaintiffs also raise claims under state law. Magistrate Judge Steele filed a motion to dismiss. Subsequently, plaintiffs filed a motion and memorandum in support to strike Magistrate Judge Steele's motion to dismiss, which the court denied. Based on a review of the complaint and the relevant law, the court dismisses this action against Magistrate Judge Steele.

I. Facts

According to the plaintiffs' complaint, the following events occurred. On or about March 10, 1992, Internal Revenue Service (IRS) Agent Curtis visited Omega Farris demanding money and threatened to arrest Omega Farris. Curtis continued to demand money in the amount of $500,000.00 from Omega Farris informing Omega Farris that he could work something out. Omega Farris refused to pay the amount. Subsequently, Omega Farris received notice of a number of liens, including a Notice of Federal Tax Lien filed May 4, 1992, a Notice of Federal Tax Lien filed May 11, 1992 in the amount of $214,957.67, and five other liens totalling $347, 433.25. Magistrate Judge Steele entered an Order for Entry on Premises to Effect Levy on August 11, 1992. According to plaintiffs, on August 8, 1992, Curtis entered Omega Farris's locked house and took all personal property located inside the premises as well as other property not belonging to Omega Farris. Although plaintiffs identify August 8 as the date the property was seized, plaintiffs also allege that the property was seized on August 11. On or about December 13, 1992, Curtis seized all bank accounts from Omega Farris.

2

Plaintiffs contend that IRS agents Dorman, Smith, and Weiss assisted Curtis by demanding money from Omega Farris and that IRS Agent Russell signed and transferred plaintiffs' rights to the property to other persons. Plaintiffs also assert that Roach conspired with Curtis against Omega Farris to purchase one of the properties belonging to Omega Farris. With regard to Magistrate Judge Steele, plaintiffs argue that Magistrate Judge Steele entered an order to levy and seize pursuant to section 6331 of the Internal Revenue Code which was outside of the scope of his authority and jurisdiction. As to Hart, an IRS District Director, plaintiffs contend that he and the other IRS agents knowingly acted outside the scope of their agency regulations and statutes to seize plaintiffs' properties.

With regard to plaintiffs' claims under ss. 1985 and 1986, plaintiffs allege that the IRS agents conspired with Magistrate Judge Steele and Roach to deprive plaintiffs of their property on August 11, 1992 and that Magistrate Judge Steele could have prevented the deprivation of property and failed to do so. Plaintiffs appear to allege that the seizure pursuant to section 6331 of the Internal Revenue Code was improper. According to plaintiffs, the Notice of Federal Tax Lien failed to state the federal regulation which gives force and effect to implement the validity of the lien. Plaintiffs also contend that the defendants entered the property without a warrant in violation of their constitutional rights.

3

II. Legal Discussion

A. Legal Standard for Motion to Dismiss

For purposes of a motion to dismiss, the court must view the allegations of the complaint in the light most favorable to the plaintiff and consider the allegations of the

complaint as true. *See Quality Foods de Centro Am., S. A. v. Latin Am. Agribusiness Dev. Corp., S. A.*, 711 F.2d 989, 994-95 (11th Cir. 1983). To dismiss a claim for failure to state a claim upon which relief can be granted, the defendant must demonstrate that the plaintiff can prove no set of facts which would entitle him to relief. *See Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *accord Powell v. Lennon*, 914 F.2d 1459, 1463 (11th Cir. 1990).

B. Judicial Immunity

Magistrate Judge Steele asserts that he is entitled to absolute judicial immunity. Plaintiffs did not file a response in opposition to Magistrate Judge Steele's motion to dismiss. However, in plaintiffs' motion to strike the motion to dismiss, plaintiffs appear to argue that Magistrate Judge Steele lacked subject matter jurisdiction when he entered the Order for Entry on Premises to Effect Levy. Under the doctrine of judicial immunity, judges are absolutely immune from liability for acts performed in their judicial capacity. *Dennis v. Sparks*, 449 U.S. 24, 27 (1980); *Stump v. Sparkman*, 435 U.S. 349, 359 (1978); *Pierson v. Ray*, 386 U.S. 547, 554 (1967) (noting that a judge's errors may be corrected on appeal and stating that a judge "should not have to fear that unsatisfied litigants may hound

him with litigation charging malice or corruption). To determine whether an act is a judicial act, courts look to whether the act is a function normally performed by a judge and whether the parties dealt with the judge in his judicial capacity. *See Stump*, 435 U.S. at 362. "A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather he will be subject to liabilitiy only when he has acted in the 'clear absence of all jurisdiction.' " *Id.* at 356-57 (noting that the scope of a judge's jurisdiction is construed broadly where

the judge's immunity is at issue). In the Supreme Court's decision of *Stump v. Sparkman*, the Court quoted its decision in *Bradley v. Fisher* regarding the distinction between excess of jurisdiction and clear absence of jurisdiction.

> Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject-matter is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend.

Id. at356 n.6 (quoting *Bradley v. Fisher*, 13 Wall. 335, 351-52 (1872)). In addition, the former Fifth Circuit[1] has defined "clear absence of jurisdiction" as referring to

---

[1] In *Bonner v. City of Pritchard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent the decisions of the former Fifth Circuit handed down prior to October 1, 1981.

situations in which a judge acts purely in a private and non-judicial capacity. *Henzel v. Gerstein*, 608 F.654, 658 (5th Cir. 1979).

The complaint asserts that Magistrate Judge Steele entered an Order for Entry on Premises to Effect Levy, Magistrate Judge Steele conspired with the IRS agents to deprive plaintiffs of their property, and that Magistrate Judge Steele could have prevented the alleged deprivation. The court finds that Magistrate Judge Steele's act in entering the

order was a judicial act. The act of issuing such an order is a normal judicial function. The court further finds that Magistrate Judge Steele did not act in clear absence of jurisdiction. *See* 28 U.S.C. s. 636(b)(4) (1988) (stating that each district court shall establish rules pursuant to which the magistrate judges shall discharge their duties); Local Rule 6.01(c)(1), M. D. Fla. (providing that duties authorized to be performed by United States Magistrate Judges include issuance of search warrants upon the determination that probable cause exists, pursuant to Federal Rule of Criminal Procedure 41, and issuance of administrative search warrants upon proper application meeting the requirements of applicable law). Magistrate Judge Steele is immune from suit under the doctrine of judicial immunity for his judicial act. Accordingly, the court grants Magistrate Judge Steele's motion to dismiss for failure to state a claim upon which relief can be granted.

6

III. Conclusion

The court finds that Magistrate Judge Steele is absolutely immune from liability for the acts performed in his judicial capacity. Accordingly, the court grants Magistrate Judge Steele's motion to dismiss. (Doc. 103.)

It is SO ORDERED in Orlando, Florida, this 27th day of February 1995.

/s/ G. KENDALL SHARP
United States District Judge

Copies to all counsel of record

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 95-2387 & 95-2388

ELLIOTT ROSADO; OMEGA FARRIS;
SHERRY FARRIS; GARY FARRIS,
Plaintiffs-Appellants,

versus

JOSEPH V. CURTIS; PATRICIA E. DORMAN;
JOE F. ROACH; ROSLYN A. RUSSELL;
ORLAN SMITH; ET AL.,
Defendants-Appellees.

On Appeal from the United States District Court for the
Middle District of Florida

O R D E R:

Appellants' motion to strike Appellees' brief is denied.

Appellants' motion "To Evidence the Basis Upon Which the Defendants-Appellees Have Established a Material Issue in the Record," construed as a motion to issue a show cause order, is denied.

Appellants' "Motion to Strike the Defendants-Appellees', Internal Revenue Service Employees', Answer Brief, Or in the Alternative, To Evidence the Basis

Upon Which the Defendants-Appellees Have Established a Material Issue in the Record," construed as a motion that "findings of fact and conclusions of law be rendered, however cursory, in the interest to [sic] Judicial Protection to [Appellants] so that [they] may learn how the Federal Rules of Evidence apply in the case at hand," is denied.

/s/ GERALD BARD TJOFLAT
UNITED STATES CIRCUIT JUDGE

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 95-2387 and 95-2388
Non-Argument Calendar

D. C. Docket No. 94-59-Civ-Orl-18

Filed Apr 17, 1996
Miguel J. Cortez, Clerk

ELLIOTT ROSADO; OMEGA FARRIS;
SHERRY FARRIS; GARY FARRIS,

Plaintiffs-Appellants,

versus

JOSEPH V. CURTIS; PATRICIA E. DORMAN;
JOE F. ROACH; ROSLYN A. RUSSELL;
ORLAN SMITH; MARGARET A. WEISS;
JOHN E. STEELE; JANE DOES # 1-10;
JOHN DOES # 1-10; DALE F. HART,

Defendants-Appellees.

Appeals from the United States District Court
for the Middle District of Florida

(April 17, 1996)

Before TJOFLAT, Chief Judge, ANDERSON and BIRCH,

Circuit Judges.
PER CURIAM:

We have examined appellants' claims of error in these appeals and find no merit in any of them. We therefore affirm the district court's dismissal of Magistrate Judge Steele from the case on the ground of absolute immunity (appeal No. 95-2387) and the court's entry of summary judgment in favor of the remaining defendants in the case (appeal No. 95-2388).

AFFIRMED.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

April 17, 1996 — In Replying Give Number Of Case And Names Of Parties

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

95-2387 Rosado, et al. v. Curtis, et al.
95-2388 Rosado, et al. v. Curtis, et al.

Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to Rule 36 of the Federal Rules of Appellate Procedure. Fed.R.App.P. 39, 40, 41, and the corresponding circuit rules govern costs, petitions for rehearing and mandate, respectively.

To be timely, a petition for rehearing or a suggestion of en banc consideration must be received in the clerk's office within twenty-one (21) days of the date of this opinion and judgment, except that: in CIVIL cases in which the United States or an agency or officer thereof is a party, the time within which *any* party may seek rehearing shall be **FORTY-FIVE (45 DAYS)** after entry of judgment (unless

the time is shortened or enlarged by order). See Fed.R.App.P. 40(a), as amended, effective December 1, 1994. No additional time for service by mail is permitted. See 11th Cir. R. 40-2.

Pursuant to Davidson v. City of Avon Park, 848 F.2d 172 (11th Cir. 1988), if attorney's fees on appeal are authorized by law they must be sought by filing a petition for attorney's fees with this office within fourteen (14) days of the date of the court's opinion. Any request for attorney's fees received after that date must be accompanied by a motion to file out of time.

In a direct criminal appeal, 11th Cir. R. 41-1 provides that issuance of the mandate shall not be stayed simply upon request: "Ordinarily the motion will be denied unless it shows that it is not frivolous, not filed merely for delay, and shows that a substantial question is to be presented to the Supreme Court or otherwise sets forth good cause for a stay."

Counsel appointed under the Criminal Justice Act are also urged to consider recent revisions to 11th Cir. R. Addendum Four, sections (f)(4) and (f)(5) [copy enclosed to CJA counsel].

Counsel appointed pursuant to 11th Cir. R. Addendum Five, "Non-Criminal Justice Act Counsel Appointments," are reminded that section (d)(3) of Addendum Five provides: "In the event of affirmance or other decision adverse to the party represented appointed counsel shall promptly advise the party in writing of the right to seek further review by the filing of a petition for writ of certiorari with the Supreme Court." Counsel are also reminded that section (d)(4) of Addendum Five provides: "Appointed counsel shall advise the party represented in each case that, if the party wishes to file a petition for a writ of certiorari with the Supreme Court, the party may have the right to do so without prepayment of fees and costs or giving security therefor."

Pursuant to Fed.R.App.P. 39, costs taxed against plaintiffs-appellants.

Sincerely,
MIGUEL J. CORTEZ, Clerk
By: /s/ Elaine McCombs, Deputy Clerk

Encl.
cc: Elliott Rosado, Omega Farris, Sherry Farris, Gary Farris, Gary R. Allen, Patricia M. Bowman, Loretta C. Argrett, Ann B. Durney, Tamra Phipps, Linda J. McNamara, Robert E. Miller
P. S. order enclosed

APPENDIX D

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELLIOTT ROSADO, OMEGA FARRIS, and SHERRY FARRIS,
Plaintiffs-Appellants,

v.

JOSEPH V. CURTIS, JOHN E. STEELE, PATRICIA E. DORMAN, ROSLYN A. RUSSELL, JOE F. ROACH, MARGARET A. WEISS, ORLAND D. SMITH, DALE F. HART, JOHN DOE # 1-10, JANE DOE # 1-10,
Defendants-Appellees.

CASE NO.: 95-2387 & 95-2388
DC DKT NO.: 94-0059-CIV-ORL-18

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Plaintiffs-Appellants, ELLIOTT ROSADO, OMEGA FARRIS, and SHERRY FARRIS, in propria persona as a Pro Se, and hereinafter called ROSADO-FARRIS, moves this Honorable Court to rule on **PLAINTIFFS'-APPELLANTS' MOTION TO REHEARING AS A MOTION TO DECLARATORY JUDGMENT FOR CLARIFICATION OF THE PROPOSED PER CURIAM DECISION OF APRIL 17, 1996,** which shall be disposed of without oral argument by the Honorable Three Judge Panel pursuant to Fed.R.App.P. 27(a) the above-styled court, in Chambers, in the U. S. Court of Appeals for the Eleventh Circuit, Atlanta, Georgia on July 1, 1996, or as soon thereafter as ROSADO-

FARRIS may be heard, and pursuant to Fed.R.App.P. 27(c), 40(a), it seems to ROSADO-FARRIS that the motion herein is dispositive of the appellate action before this court so as to require a ruling by the court and not a single judge which cannot determine an appeal.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

DATED this 24th day of May, 1996.

/s/ Omega Farris, Pro Se
Non Domestic Mail, P. O. Box 771972
Winter Garden, Florida USA 34777

/s/ Sherry Farris, Pro Se
/s/ Elliott Rosado, Pro Se

We HEREBY CERTIFY that a true and correct copy of the foregoing notice of motion, motion, certificate of interested persons, has been sent by U. S. Mail, first class postage prepaid, this 24th day of May, 1996, addressed to the following:

Loretta C. Argrett, Gary R. Allen, Patricia M. Bowman
U.S.A. Department of Justice, Tax Division
P. O. Box 502
Washington, D. C. 20044

Charles R. Wilson, Tamra Phipps, Linda Julin Mcnamara
United States Attorney
Robert Timerlake Building, Room 400
500 Zack Street
Tampa, Florida 33602

Robert E. Miller, Esq.
MILLER & GRACE, P. A.
Raintree Office Park
990 Douglas Avenue, Suite 102

Altamonte Springs, FL 32714

/s/ Omega Farris, Pro Se
Non Domestic Mail, P. O. Box 771972
Winter Garden, Florida USA 34777

/s/ Sherry Farris, Pro Se
/s/ Elliott Rosado, Pro Se

U. S. COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

ELLIOTT ROSADO v. JOSEPH V. CURTIS
Dkt No. 95-2387 and 95-2388

Pursuant to Eleventh Circuit Rule 26.1, the following is an alphabetical list of the trial judge, attorneys, persons, firms, partnerships and corporations with any known interest in the outcome of this appeal:

1. Ann Reid, Trial Attorney, Tax Division, United States of America Department of Justice;
2. Attorney General, and the Archivist of the United States of America jointly, pursuant to Title 3 U.S.C., section 301;
3. Congress of the United States of America;
4. Charles R. Wilson, attorney for defendant-appellee;
5. Bureaus of Alcohol, Tobacco and Firearms, Agency under the Treasury department of the United States of America;
6. Dale F. Hart, defendant-appellee;
7. Elliott Rosado, plaintiff-appellant, Pro Se;
8. Gary Farris, plaintiff-appellant, Pro Se;
9. Gary R. Allen, attorney for defendant-appellee;
10. Honorable G. Kendall Sharp, trial judge, U. S. District

Court, Middle District of Florida;
11. Internal Revenue Service, Executive Administrative Agency, of the United States of America;
12. John Doe # 1-10, defendant-appellee;
13. Jane Doe # 1-10, defendant-appellee;
14. Joe F. Roach, defendant-appellee;
15. John E. Steele, defendant-appellee;

C1 of C2

16. Joseph V. Curtis, defendant-appellee;
17. Loretta C. Argrett, attorney for defendant-appellee;
18. Linda Julin McNamara, Assistant;
19. Margaret A. Weiss, defendant-appellee;
20. Margaret Milner Richardson, Commissioner of I. R. S.
21. Michael A. Cauley, Assistant of the United States of America Attorney;
22. Orland D. Smith, defendant-appellee;
23. Omega Farris, plaintiff-appellant;
24. Patricia E. Dorman, defendant-appellee;
25. Patirica M. Bowman, Attorney, Appellate Section, Tax Division of the United States of America Department of Justice;
26. Robert E. Miller, attorney for Joe F. Roach, defendant-appellee;
27. Robert L. Welsh, Trial Attorney, Civil Trial Section, Southern Region, Texas Division, United States of America Department of Justice;
28. Roslyn A. Russell, defendant-appellee;
29. Treasury Department of the United States of America;
30. Sherry Farris, plaintiff-appellant, Pro-Se;
31. Steven Shapiro, Chief, Civil Trial Section, Souther Region, Texas Division, United States of America Department of Justice.

C2 of C2

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

ELLIOTT ROSADO, OMEGA FARRIS, and SHERRY FARRIS,
Plaintiffs-Appellants,

v.

JOSEPH V. CURTIS, JOHN E. STEELE, PATRICIA E. DORMAN, ROSLYN A. RUSSELL, JOE F. ROACH, MARGARET A. WEISS, ORLAND D. SMITH, DALE F. HART, JOHN DOE # 1-10, JANE DOE # 1-10,
Defendants-Appellees.

CASE NO.: 95-2387 & 95-2388
DC DKT NO.: 94-0059-CIV-ORL-18

PLAINTIFFS'-APPELLANTS' MOTION TO REHEARING AS A MOTION TO DECLARATORY JUDGMENT FOR CLARIFICATION OF THE PROPOSED PER CURIAM DECISION OF APRIL 17, 1996

COMES NOW, the Plaintiffs-Appellants, ELLIOTT ROSADO, OMEGA FARRIS, and SHERRY FARRIS, in propria persona as a Pro Se, and hereinafter called ROSADO-FARRIS, to request that the **PLAINTIFFS'-APPELLANTS' MOTION TO REHEARING AS A MOTION TO DECLARATORY JUDGMENT FOR CLARIFICATION OF THE PROPOSED PER CURIAM DECISION OF APRIL 17, 1996** be granted pursuant to Fed.R.Civ.P. 40(a) together with 28 U.S.C., s. 2201, and as grounds shows this Honorable Court the following points of law and fact to avoid its misapprehension and to avoid further deprivation of their

fundamental rights:

1.-- "In essence, for a district court to have jurisdiction to issue a declaratory judgment, two conditions must be satisfied. First, the dispute must be a 'case or controversy' within the confines of Article III of the United States Constitution -- the 'constitutional' inquiry. Second, the trial court, in its discretion, must be satisfied that declaratory relief is appropriate -- the 'prudential' inquiry.

"The test for a 'case or controversy,' the constitutional inquiry, is whether the dispute 'is definite and concrete, touching the legal relations of parties having adverse legal interests.' AETNA LIFE INS. CO. v. HAWORTH, 300 US 227, 240-41, 57 S.Ct. 461, 463-64, 81 L.Ed. 617 (1937). 'It must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.' Id. The question is 'whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.' MARYLAND CASUALTY CO. v. PACIFIC COAL & OIL CO., 312 US 270, 273, 61 S.Ct. 510, 512, 85 L.Ed. 826 (1941)." ***WHITE v. NATIONAL UNION FIRE INS. CO.*, 913 F.2d 165, 167-168 (CA4 Virg. 1990),** and in ***WILLING v. CHICAGO AUDITORIUM ASS'N*, 277 US 274, 48 S.Ct. 507, 72 L.Ed. 880 (1928),** the Court stated that, "[a]fter hearing the case fully on the evidence, the District Court dismissed the bill 'for want of equity jurisdiction in the court to grant any relief upon the pleadings and the evidence, but without prejudice to whatever rights the plaintiff may have * * * when asserted in any appropriate proceeding or otherwise.' 8 F.(2d) 998," and while the Circuit Court of Appeals disagreed, the United States Supreme Court found the District Court's final decree appropriate, and in ***NEW YORK v. ILLINOIS*, 274 US 488, 47 S.Ct. 661, 71 L.Ed. 1164 (1927),** the Court said, "This

ruling will be without prejudice, so that the plaintiff state, if later on in a position to do so, may be free to litigate the questions which the paragraph is intended to present," and in light of ***NOLL v. CARLSON,*** **809 F.2d 1446 (9th Cir. 1987),** where the appellate court ruled that a Pro Se litigant bringing civil suit is entitled notice of any motion made by defendant or court to dismiss the complaint and there was no such notice of impending dismissal of the declaratory judgment action, and Pro Se litigants' pleadings are to be construed liberally and held to less stringent standards than formal pleadings drafted by lawyers; if the court can reasonably read the pleadings to state a valid claim on which the litigant could prevail, it should do so despite the litigants' unfamiliarity with pleading requirements, ***SPANNAUS v. FEDERAL ELECTION COMMISSIONERS,*** **990 F.2d 643 (D. C. Cir. 1993);** ***KINCAP v. VAIL,*** **969 F.2d 594 (7th Cir. 1992);** ***BOAG v. MacDOUGALL,*** **454 US 364, 70 L.Ed.2d 551, 102 S.Ct. 700 (1982);** ***HAINES v. KERNER,*** **404 US 519, 30 L.Ed.2d 652, 92 S.Ct. 594 (1972),** and ROSADO-FARRIS are entitled to dismissal of their complaint as to all federal defendants without prejudice.

2.-- In ***BINGHAM v. UNITED STATES,*** **724 F.2d 921 (CA11 Fla. 1984)** this court said, "Once the movant sustains its burden of demonstrating the absence of genuine factual issues, summary judgment may still be inappropriate. First, even if the material factual issues are not in dispute, they must furnish an adequate basis for the court to apply the proper legal principles in resolving a difficult question of law. *See* UNITED STATES v. PERRY, 431 F.2d 1020, 1023 (9th Cir. 1970) (statutory construction)." **724 F.2d, at 924,** and it seems to ROSADO-FARRIS that this case may be distinguished from the instant case in that through inadvertence as Pro Se litigants within the purview of Fed.Civ.Proc. Rule 9(b) ROSADO-FARRIS failed to motion the district court to declaratory judgment though the record clearly shows from the face of their complaint their request for declaratory relief, and this court had no problem

recognizing that the Secretary of the Treasury or his designee must promulgate implementing regulations of a legislative character to have a complete statutory scheme within the meaning of the MERSKY decision to authorization for enforcement with the full force and effect of law, and in ***BINGHAM*** this court reversed and remanded and in the instant case circumstances justify vacating and remanding with instructions to dismiss ROSADO's-FARRIS' complaint against all federal defendants without prejudice.

3.-- "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. (Citations omitted) ***CONLEY v. GIBSON,*** **355 US 41, 45-46, 78 S.Ct. 99, 102, 2 L.Ed.2d 80 (1957).** "[A]ll the Rules [of Federal Civil Procedure] require is 'a short and plain statement of the claim' Rule 8(a)(2), 28 U.S.C.A., that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests. * * * Such simplified 'notice pleading' is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues. Following the simple guide of Rule 8(f) that *'all pleadings shall be so construed as to do substantial justice,'* we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. Cf. MATY v. GRASSELLI CHEMICAL CO., 303 US 197, 58 S.Ct. 507, 82 L.Ed. 745." *(Emphasis ours)* ***CONLEY v. GIBSON,*** **355 US, at 47-48, 78 S.Ct., at 103,** and in the instant case the face of ROSADO's-FARRIS' complaint shows the Plaintiffs

are entitled to a discovery of the legislative regulations needed to implement the statutes which the federal defendants enforced against ROSADO-FARRIS without which said statutes have no force and effect of law to authorization, and it seems to ROSADO-FARRIS that their complaint satisfied the requirements of Rule 8 in that the district court and the federal defendants obtained a basic understanding of the claims against the federal defendants. ***HOSPITAL BLDG. CO. v. TRUSTEES of REX HOSPITAL,* 425 US 738, 96 S.Ct. 1848, 48 L.Ed.2d 338 (1976).**

4.-- When a government officer exercises purely political powers, he is accountable only in his political character. "But when the legislature proceeds to impose on that officer other duties; when he is directed peremptorily to perform certain acts; when the rights of individuals are dependent on the performance of those acts; he is so far the officer of the law; is amenable to the laws for his conduct; and cannot at his discretion sport away the vested rights of others." ***MARBURY v MADISON,* 1 Cranch 137, 166, 2 L.Ed. 60, 70 (1803),** and ROSADO-FARRIS have a vested property interest in implementing regulations under part 1 of the 26 C.F.R. that would give the force and effect of law to the federal statutes the federal defendants enforced against ROSADO-FARRIS where 26 U.S.C., s. 7805a which is the statutory authority mandating the promulgation and adoption of said implementing regulations of a legislative character which ROSADO-FARRIS also have a vested property interest in defines said vested property right in implementing regulations of a legislative character and ROSADO-FARRIS are entitled to be shown them through discovery where 26 U.S.C., s. 7805a is a specific duty and "where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, it seems equally clear that the individual who considers himself injured, has a right to resort to the laws of his country for a remedy." ***Ibid.*** Further, ROSADO-FARRIS fail to see how their complaint fails to meet the standards set by Fed.Civ.Proc. Rule 8 so as to

violate Rule 12(b)(6) such that their action could be decided on the merits "with prejudice."

5.-- "Of course a [d]istrict [c]ourt cannot decline to entertain such an action as a matter of whim or personal disinclination. 'A declaratory judgment, like other forms of equitable relief, should be granted only as a matter of judicial discretion, exercised in the public interest.' ECCLES v. PEOPLES BANK, 333 US 426, 431, 68 S.Ct. 641, 644, 92 L.Ed. 784." ***PUBLIC AFFAIRS ASSOCIATES, INC. v. RICKOVER,* 369 US 111, 112, 82 S.Ct. 580, 582, 7 L.Ed.2d 604 (1962),** and "the proper function of the motion to dismiss for failure to state a claim, F.R.Civ.P. 12(b), 28 U.S.C.A., * * * allows of no discretion in the usual sense. The complaint is either good or not good." ***MITCHELL v. E-Z WAY TOWERS, INC.,* 269 F.2d 126, 130 (CA5 Fla. 1959),** and it seems to ROSADO-FARRIS that if the complaint was not good and must be dismissed on jurisdictional grounds within the purview of Fed.Civ.Proc. Rule 41(b), and if the federal defendants' 12(b)(6) motion is treated as a motion to summary judgment then it could not be said to a certainty that ROSADO-FARRIS is entitled to no relief under any state of facts which could be proved in support of their claim without the district court ruling on what basis ROSADO-FARRIS are denied declaratory relief where the face of their complaint clearly shows declaratory judgments were prayed for and all federal defendants admitted pursuant to Fed.Civ.Proc. Rule 8(d) ROSADO's-FARRIS' controlling issues of law.

6.-- " 'Access to the courts,' then, * * * encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him." ***GILMORE v. LYNCH,* 319 F.Supp. 105, 110 (N.D.Cal. 1970),** affirmed sub nom ***YOUNGER v. GILMORE,* 404 US 15, 92 S.Ct. 250, 30 L.Ed.2d 142 (1971) (per curiam),** and "[t]he right of access is a discrete, constitutional right, derived from various constitutional sources. It springs in part from

the due process clause, WOLFF v. McDONNELL, 418 US 539, 579, 94 S.Ct. 2963, 2986, 41 L.Ed.2d 935 (1974); the privileges and immunities clause, CHAMBERS v. BALTIMORE & OHIO RAILROAD, 207 US 142, 148, 28 S.Ct. 34, 35, 52 L.Ed. 143 (1907); and the First Amendment, CALIFORNIA MOTOR TRANSPORT CO. v. TRUCKING UNLIMITED, 404 US 508, 513, 92 S.Ct. 609, 613, 30 L.Ed.2d 642 (1972). *See generally* RYLAND v. SHAPIRO, 708 F.2d 967, 971-72 (5th Cir. 1983). The right of access is fundamental. BOUNDS v. SMITH, 430 US 817, 828, 97 S.Ct. 1491, 1498, 52 L.Ed.2d 72 (1977).

"It follows logically that the allegation of intentional violation of the right of access to the courts states a cause of action under [28 U.S.C.A., s. 2201]." WRIGHT v. NEWSOME, 795 F.2d 964, 968 (11th Cir. 1986) (other citations omitted). ***SIMMONS v. DICKHAUT,* 804 F.2d 182, 183 (CA1 Mass. 1986) (per curiam).** The United States Supreme Court has said, "The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution." ***COHENS v. VIRGINIA,* 19 US (6 Wheat.) 264, 404, 5 L.Ed. 257, 291 (1821),** and it seems to ROSADO-FARRIS that in light of the foregoing and the following facts and law this Honorable appellate court needs vacate the district court's orders and remand this cause with instructions to dismiss the action herein with respect to all federal defendants without prejudice in order to prevent further irreparable harm to ROSADO-FARRIS due to further deprivation of their aforesaid fundamental rights considering that the district court judge in the instant case has a duty to be responsive to the issues within the purview of ***REYNOLDS v. STOCKTON, infra,*** and "constitutional law * * * was

promulgated as a compact, by all in the first instance, to shield minorities from majorities." ***PEAVY-WILSON LUMBER CO. v. BREVARD COUNTY,* 31 So.2d 483, 487 (Fla. 1947),** and the district court judge violates 5 U.S.C.A., s. 3331 which is a Congressional mandate implementing Article VI, Clause 3 of the Constitution for the United States of America pursuant to said district court judge, **7 Op. Atty. Gen. 303,** and lex loci contractus in contradistinction to a status relation does not have to be controlling for the operation of said federal statute to give rise to a constructive trust forming where ROSADO-FARRIS is further irreparably harmed by further deprivation of their fundamental rights if this Honorable appellate court fails to compel the exercise of the district court judge's jurisdiction where said judge has the performance of his fiduciary duty in the exercise of the court's jurisdiction to consider, and the rule of law has no narrow definition of a fiduciary relationship protected where ***DALE v. JENNINGS,* 90 Fla. 234, 107 So. 175 (1925)** stated that whenever two persons stand in such a relation that, while it continues, confidence is necessarily reposed by one, and the influence that naturally grows out of that confidence is possessed by the other, and this confidence is abused, or the influence is exerted to obtain an advantage at the expense of the confiding party, the person so availing himself of his position will not be permitted to retain the advantage, and the advantage of ignoring jurisdiction to preserve the status quo so as not to disturb public policy should not override ROSADO's-FARRIS' fundamental rights in the instant case, and a constructive trust does arise herein where the relation between ROSADO-FARRIS and the district court judge is a fiduciary one. ***BOSWELL v. CUNNINGHAM,* 32 Fla. 277, 13 So. 354, 21 LRA 54 (1893).**

7.– In ***REYNOLDS v. STOCKTON,* 140 US 254, 264, 11 S.Ct. 773, 775, 35 L.Ed. 464 (1891)**, the Court said, "We are of opinion that the decision of the chancery court of New Jersey, as sustained by the court of errors and appeals of that state, is correct, and must be affirmed. The first and

obvious reason is that the judgment of the supreme court of New York was not responsive to the issues presented," and "[t]he invalidity of the judgment depends upon the fact that it is in no manner responsive to the issues tendered by the pleadings. This idea underlies all litigation. Its emphatic language is that a judgment, to be conclusive upon the parties to the litigation, must be responsive to the matters controverted." ***Ibid,* 140 US, at 265-266, 11 S.Ct., at 776.** The record in the instant case clearly shows that the federal defendants have failed to be responsive, and the pleading herein is within the purview of ***REYNOLDS v. STOCKTON.***

8.-- In ***SHAKMAN v. DEMOCRATIC ORGANIZATION of COOK COUNTY,* 533 F.2d 344 (CA7 Ill. 1976)** the appellate court said, "[m]oreover, plaintiffs alleged in their petition that Cardilli possessed actual notice of the judgment. Respondents' failure to deny this allegation in their answer must be deemed an admission under Fed.R.Civ.P. 8(d), (citations omitted). **533 F.2d, at 352,** and in ***FONTES v. PORTER,* 156 F.2d 956 (CA9 Cal. 1946)** the appellate court said, "[t]he allegation was not denied in the answer, and accordingly must be taken as admitted. Rule 8(d), Federal Rules of Civil Procedure, 28 U.S.C.A., following section 723c [which became section 2072 under Act of June 25, 1948, c. 646, s. 1, 62 Stat. 869]. Neither proof nor finding is requisite in respect of uncontested issues." **156 F.2d, at 957,** and in ***SCHOLL v. SCHOLL,* 152 F.2d 672 (D. C. Cir. 1945)** the appellate court said, "[t]he answer admitted in part and denied in part the averments respecting the house and its accupancy but neither admitted nor denied the averments concerning the furniture. These latter must, therefore, be taken as admitted. Rule 8(d), Fed.Rules Civ.Proc., 28 U.S.C.A., following section 723c. * * * The ownership of the house, the proceeds from its occupancy, and the disposition of the furniture were clearly issues in the case." **152 F.2d, at 674,** and "[a]ppellee certainly stated a claim in respect to the house, and in respect to appellant's removal of the furniture. He prayed for

judgment awarding the house to him, *'and for such other and further relief as to the Court may seem just and proper.'* Since appellant did not deny the lease or the averments respecting the furniture, she must be deemed to have admitted them. Rule 8(d), Fed.Rules Civ.Proc., supra." **152 F.2d, at 675,** and in ***YARNELL v. ROBERTS,* 66 F.R.D. 417 (E.D.Penn. 1975),** the district court said, "[t]he theory of Rule 8 is that a defendant's pleading should apprise the plaintiff of the allegations in the complaint that stand admitted and will not be in issue at trial and those that are contested and will require proof to be established to enable plaintiff to prevail. If the answer is not sufficiently definite to give reasonable notice of the allegations in the complaint sought to be placed in issue, the opponents' averments may be treated as admitted 5 Wright and Miller, Federal Practice and Procedure, s. 1261 (1969)." **66 F.R.D., at 423,** and in ***PUBLICKER v. SHALLCROSS,* 106 F.2d 949 (CA3 Penn. 1939),** the appellate court said, "[t]he first time this case came before us, counsel for appellant-respondent demurred to and so technically admitted the truth of the facts alleged by petitioner-appellees. We understood that he did so purely for the purpose of testing the law. We felt that the cause might be more justly decided if all the facts were known, and remanded it to the District Court with direction to file an answer and proceed to hearing on the merits. * * * Appellant's new counsel evidently did not share our feeling. His answer again in substance admits the crucial averments of the petition (by the device of styling them as immaterial and not requiring an answer). (Citation omitted) No further facts are added. Thanks to this cooperative gesture on the part of counsel, we are now back where we started -- testing a pure question of law." **106 F.2d, at 949,** and in ***HALL v. CASUALTY and SURETY CO.,* 617 F.2d 1108 (CA5 Ala. 1980)** the appellate court said, "[i]n his complaint Hall alleged the existence and coverage of Aetna's policy, which was issued pursuant to section 33-1-25 of the Code of Alabama. Aetna's answers denied only that the claimed

negligence was the proximate cause of Hall's injuries. Under Federal Rule of Civil Procedure 8(d), the effect of its failure to deny coverage under its policy was to admit this coverage. *See* SINCLAIR REFINING CO. v. HOWELL, 222 F.2d 637, 639 (5th Cir. 1955)." **617 F.2d, at 1111,** and see also ***MESCHINO v. NORTH AMERICAN DRAGER, INC.*, 841 F.2d 429 (1st Cir. 1988)** (since the failure of the defendant to deny an allegation in the complaint constitutes an admission under Rule 8(d), and the defendant actually admitted the allegation, the plaintiff had no obligation to submit evidenceon this issue), and "[a]verments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided." **Rule 8(d), Fed.Civ.Proc.,** in pertinent part, and defenses raised in the federal defendants' Answer to the Plaintiffs' verified complaint which answer asserts that the federal defendants had authority to enforce statutes as self-executing statutes, and where such answer avoids responding to Plaintiffs' averment that said statutes are not self-executing within the purview of the MERSKY decision, then the district court may regard the Plaintiffs' averment avoided if the uncontroverted averment becomes an issue in the case as in ***NEEFF v. EMERY TRANSP. CO.*, 284 F.2d 432 (CA2 NY 1960),** where, in response to the plaintiff's complaint in a personal injury action, the defendant filed an affirmative answer alleging a release as a defense, the question of the validity of the release became a controverted issue in the case without the necessity of the plaintiff filing a reply alleging that the release was invalid. In the alternative, in ***HAMMERER v. HUFF,* 110 F.2d 113, 115 (D.C. Cir. 1939),** the court held that where, "it was alleged in the petition for the writ of habeas corpus that at the time of the imposition of the second sentence the trial judge 'was advised of the good time [the deductions for good conduct] of the aforesaid previous sentence [the first sentence] . . . ' of the appellant 'and so ruled that same should run concurrent with the aforesaid current sentence [the second sentence].' This was not denied in the appellee's return to the writ, and,

therefore, under Rule 8(d) of the Rules of Civil Procedure . . . [it] stood admitted in the trial court in the instant case," and the appellant court remanded thet case to the district court to a decision in accordance with this ruling. Whichever view the 11th Circuit Court of Appeals chooses to see the instant case, the record must be seen in light of the district court's failure to issue an order which is responsive to Plaintiffs' issues within the purview of ***REYNOLDS v. STOCKTON, supra.***

WHEREFORE, the Plaintiffs-Appellants, ROSADO-FARRIS, move this court to grant the motion herein on the aforementioned grounds to vacate the district court orders and remand the cause herein with instructions to dismiss all federal defendants without prejudice, and grant unto ROSADO-FARRIS such other and further relief as this court may deem just and proper.

Dated this 24th day of May, 1996.

/s/ Omega Farris, Pro Se
Non Domestic Mail, P. O. Box 771972
Winter Garden, Florida USA 34777

/s/ Sherry Farris, Pro Se

/s/ Elliott Rosado, Pro Se

DECLARATION
Pursuant to Title 28 U.S.C., section 1746(1)

We, the Plaintiffs-Appellants, Elliott Rosado, Omega Farris, and Sherry Farris, are capable of making this declaration as **PLAINTIFFS'-APPELLANTS' MOTION TO REHEARING AS A MOTION TO DECLARATORY JUDGMENT FOR CLARIFICATION OF THE PROPOSED PER CURIAM DECISION OF APRIL 17, 1996,** and that We, each and every one, the Plaintiffs-

Appellants, are personally acquainted with the facts herein stated, and state that We, each and every one, are over the age of eighteen, and the following facts are within our personal knowledge and if We are called as a witness, We, the Plaintiffs-Appellants, each and every one, could testify thereto. We, the Plaintiffs-Appellants, Elliott Rosado, Omega Farris, and Sherry Farris, declare under penalty of perjury under the laws of the United States of America, pursuant to Title 28 U.S.C., s. 1746(1), that the foregoing is true and correct to the best of our knowledge and belief. And if we are called as a witness we could testify thereto -- each and every one of us.

Signed and dated this 24th day of May, 1996.

/s/ Omega Farris, Pro Se
Non Domestic Mail, P. O. Box 771972
Winter Garden, Florida USA 34777

/s/ Sherry Farris, Pro Se

/s/ Elliott Rosado, Pro Se

WE HEREBY CERTIFY that a true and correct copy of the foregoing notice of motion, motion, certificate of interested persons, has been sent by U. S. Mail, first class postage prepaid, this 24th day of May, 1996, addressed to the following:

Loretta C. Argrett, Gary R. Allen, Patricia M. Bowman
U.S.A. Department of Justice, Tax Division
P. O. Box 502
Washington, D. C. 20044

Charles R. Wilson, Tamra Phipps, Linda Julin Mcnamara
United States Attorney
Robert Timerlake Building, Room 400
500 Zack Street
Tampa, Florida 33602

Robert E. Miller, Esq.
MILLER & GRACE, P. A.
Raintree Office Park
990 Douglas Avenue, Suite 102
Altamonte Springs, FL 32714

/s/ Omega Farris, Pro Se
Non Domestic Mail, P. O. Box 771972
Winter Garden, Florida USA 34777

/s/ Sherry Farris, Pro Se

/s/ Elliott Rosado, Pro Se

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELLIOTT ROSADO, OMEGA FARRIS,)
and SHERRY FARRIS,)
Plaintiffs-Appellants,)
)
v.)
)
JOSEPH V. CURTIS, JOHN E. STEELE,)
PATRICIA E. DORMAN, ROSLYN A.)
RUSSELL, JOE F. ROACH, MARGARET)
A. WEISS, ORLAND D. SMITH,)
DALE F. HART, JOHN DOE # 1-10,)
JANE DOE # 1-10,)
Defendants-Appellees.)
_____/

CASE NO.: 95-2387 & 95-2388
DC DKT NO.: 94-0059-CIV-ORL-18

ORDER

This cause came on without an oral argument on this _____ day of _____, 1995, upon the Plaintiffs'-Appellants', ELLIOTT ROSADO's, OMEGA FARRIS's, and SHERRY FARRIS's, **PLAINTIFFS'-APPELLANTS' MOTION TO REHEARING AS A MOTION TO DECLARATORY JUDGMENT FOR CLARIFICATION OF THE PROPOSED PER CURIAM DECISION OF APRIL 17, 1996,** and the Court, having reviewed the motion, pleadings, and other papers on file, and being otherwise duly authorized of the premises, it is thereupon **ORDERED, ADJUDGED, AND DECREED** that the Plaintiffs'-Appellants', ELLIOTT ROSADO's, OMEGA FARRIS's, and SHERRY FARRIS's, Motion be, and hereby is, **GRANTED.**

DONE AND ORDERED in chambers in the U. S. Court of Appeals for the Eleventh Circuit in Atlanta, Georgia this _____ day of _____, 1996.

_____
CHIEF JUDGE GERALD BARD TJOFLAT

_____
JUDGE R. LANIER ANDERSON, III

_____
JUDGE STANLEY FRANCIS BIRCH, JR.

APPENDIX E

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 95-2387 & 95-2388

Filed U. S. Court of Appeals
Eleventh Circuit
JUN 14, 1996
Miguel J. Cortez, Clerk

ELLIOTT ROSADO; OMEGA FARRIS;
SHERRY FARRIS; GARY FARRIS,
Plaintiffs-Appellants,

versus

JOSEPH V. CURTIS; PATRICIA E. DORMAN;
JOE F. ROACH; ROSLYN A. RUSSELL;
ORLAN SMITH; MARGARET A. WEISS; JOHN E.
STEELE; JANE DOES # 1-10, JOHN DOES # 1-10;
DALE F. HART,
Defendants-Appellees.

On Appeal from the United States District Court for the
Middle District of Florida

BEFORE: TJOFLAT, Chief Judge, ANDERSON and

BIRCH, Circuit Judges.PER CURIAM:

The petition(s) for rehearing filed by the appellants, Elliott Roasdo, Omega Farris, Sherry Farris and Gary Farris, is Denied.

ENTERED FOR THE COURT:

/s/ GERALD BARD TJOFLAT
United States Circuit Judge

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

June 14, 1996

MEMORANDUM TO COUNSEL OR PARTIES:

RE: 95-2387 Rosado v. Curtis
DC DKT NO.: 94-00059 CIV-ORL-18

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,
/s/ MIGUEL J. CORTEZ, Clerk

Reply To: Lois Tunstall (404) 331 - 6147

Also filed in 95-2388.

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

June 14, 1996

MEMORANDUM TO COUNSEL OR PARTIES:

RE: 95-2388 Rosado v. Curtis
DC DKT NO.: 94-00059 CIV-ORL-18

The enclosed order has been entered on petition(s) for rehearing.

See Rule 41, Federal Rules of Appellate Procedure, and Eleventh Circuit Rule 41-1 for information regarding issuance and stay of mandate.

Sincerely,
/s/ MIGUEL J. CORTEZ, Clerk

Reply To: Lois Tunstall (404) 331 - 6147

Also filed in 95-2388.

APPENDIX F

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Nos. 95-2387 and 95-2388
Non-Argument Calendar

D. C. Docket No. 94-59-Civ-Orl-18

Filed U. S. Court of Appeals
Eleventh Circuit
April 17 1996
Miguel J. Cortez, Clerk

ELLIOTT ROSADO; OMEGA FARRIS;
SHERRY FARRIS; GARY FARRIS,
Plaintiffs-Appellants,

versus

JOSEPH V. CURTIS; PATRICIA E. DORMAN;
JOE F. ROACH; ROSLYN A. RUSSELL;
ORLAN SMITH; MARGARET A. WEISS;
JOHN E. STEELE; JANE DOES # 1-10;
JOHN DOES # 1-10; DALE F. HART,
Defendants-Appellees.

Appeals from the United States District Court
for the Middle District of Florida

Before TJOFLAT, Chief Judge, ANDERSON and BIRCH, Circuit Judges.

JUDGMENT

These causes came to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and were taken under submission by the Court upon the record and briefs on file, pursuant to Eleventh Circuit Rule 34-3;

UPON CONSIDERATION WHEREOF, it is now hereby ordered and adjudged by this Court that the order of the said District Court appealed from in these causes be and the same is hereby AFFIRMED;

It is further ordered that plaintiffs-appellants pay defendants-appellees the costs on appeal to be taxed by the Clerk of this Court.

Entered: April 17, 1996
For the Court: Miguel J. Cortez, Clerk
By: /s/ Matt Davidson, Deputy Clerk

ISSUED AS MANDATE: 6/25/96

A copy of the envelope that the above JUDGMENT issued as a mandate came to ROSADO-FARRIS in with return address of United States Court of Appeals, Eleventh Circuit, Office of the Clerk, 56 Forsyth Street, N.W., Atlanta, Georgia 30303, and showing the postmark of June 25, 1996.

APPENDIX G

577228 Jan 8 10 00 AM '73 2336 PG 499

WARRANTY DEED

THIS INDENTURE, made this the 22nd day of December, 1972, between POLONIA HAWKINS, a single person, and ROSA LEE H. WARD, also known as Rose Lee Hawkins, a single person, of Orlando, Florida, and DR. GODFREY WILLIAMS HAWKINS, a single person, of Miami, Florida, Grantors, and the UNITED STATES OF AMERICA, Grantee, acting by and through the Administrator of General Services.

Address: c/o Ansel W. Harris Jr,
General Services Adm., 1776 Peachtree Street N.W.,Atlanta, Ga.

WITNESSETH:

6240
23 1%

That the Grantors for and in consideration of the sum of TWENTY THOUSAND SEVEN HUNDRED THIRTY-FIVE AND NO/100 DOLLARS ($20,735.00) to them paid by the said Grantee, the receipt of which is hereby acknowledged, have granted, bargained, sold and conveyed and by these presents do grant, bargain, sell and convey unto the UNITED STATES OF AMERICA and its assigns, the following described land, to-wit:

Being all of Lot 1 of Grove Hill Addition as per plat thereof recorded in Plat Book "C", on page 80, public records of Orange County, Florida, more particularly described as follows:

From a brass pin on the south right of way line of Washington Street and the east right of way line of Bryan Avenue, said point being the northwest corner of Lot 1, Block 5, of J. J. Merrill's Addition as per plat thereof recorded in Plat Book "C", on page 70, public records of Orange County, Florida, run thence S 89°26'35" E along the south right of way line of Washington Street a distance of 144.83 feet to an iron pipe of the northwest corner of Lot 1, of Grove Hill Addition for a point of beginning, run thence S 89°26'35 E along the south right of way line of Washington Street a distance of 79.92 feet, to an iron pipe at the northeast corner of Lot 1, of Grove Hill Addition, thence S 00°02' 44" E along the east line of Lot 1, Grove Hill Addition a distance of 105.53 feet to an iron pipe on the north right of way line of Grove Hill Court, thence N 89°30'42" W along the North right of way line of Grove Hill Court and along the north line of Lot "A" of replat of part of Lot 6, Grove Hill Addition as per plat thereof recorded in Plat Book "P", on page 93, public records of Orange County, Florida, a distance of 80.12 feet to an iron pipe at the northwest corner of Lot "A" of replat of part of Lot 6, Grove Hill Addition, thence N 00°03'47" E along the west line of Lot 1, Grove Hill Addition a distance of 105.63 feet to the point of beginning, containing 0.194 acres.

All being a part of the SE¼ of Section 26, Township 22 South, Range 29 East, City of Orlando, Orange County, Florida.

RETURN TO
UNITED TITLE INSURANCE CORP.
CENTRAL TITLE DIVISION, 100 SO. ORANGE AVE.
ORLANDO, FLORIDA

This instrument prepared by
Ansel W. Harris Jr.
1776 Peachtree Street NW.
Atlanta, Georgia

BEST AVAILA

TO HAVE AND TO HOLD in fee simple. OR 2336 PG 500

The Grantors do hereby fully warrant the title to said land and will defend the same against all persons whomsoever.

The Grantors do hereby quitclaim, remise, release and convey unto the UNITED STATES OF AMERICA and its assigns, all of their right, title, and interest in and to any alleys, streets, ways, strips or gores abutting or adjoining the land described herein.

IN WITNESS WHEREOF, the said Grantors have executed these presents the day and year first above written.

WITNESSES:

Vera Koski

Terry L. Smith

Vera Koski

Terry L. Smith

L. E. Thomas

Germaine Dyer

Polonia Hawkins
POLONIA HAWKINS
A single person

Rosa Lee H. Ward
ROSA LEE H. WARD
a/k/a Rose Lee Hawkins
A single person

Godfrey William Hawkins
GODFREY WILLIAMS HAWKINS
A single person

STATE OF FLORIDA)
)
COUNTY OF ORANGE)

I hereby certify that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, personally appeared POLONIA HAWKINS, a single person, to me known to be the person described in and who executed the foregoing instrument, and acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and state aforesaid this the 28th day of December, 1972.

Vera Koski
NOTARY PUBLIC
My Commission expires ____

Notary Public, State of Florida at Large
My Commission Expires Feb. 19, 1974
Bonded by American Fire & Casualty Co.

STATE OF FLORIDA)
)
COUNTY OF ORANGE)

I hereby certify that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, personally appeared ROSA LEE H. WARD, also known as Rose Lee Hawkins, a single person, to me known to be the person described in and who executed the foregoing

LE COPY

instrument, and acknowledged before me that she executed the same.

WITNESS my hand and official seal in the County and State aforesaid this the 28th day of December 1972.

NOTARY PUBLIC
My Commission expires _____

Notary Public, State of Florida at Large
My Commission Expires Feb. 19, 1974
Bonded by Aetna Fire & Casualty Co.

STATE OF FLORIDA)
)
COUNTY OF DADE)

I hereby certify that on this day before me, an officer duly authorized in the state aforesaid and in the county aforesaid to take acknowledgments, personally appeared GODFREY WILLIAMS HAWKINS, a single person, to me known to be the person described in and who executed the foregoing instrument, and acknowledged before me that he executed the same.

WITNESS my hand and official seal in the County and State aforesaid this the 22 day of December 1972.

NOTARY PUBLIC
My Commission expires _____

Notary Public, State of Florida at Large
My Commission Expires Sept. 28, 1973
Bonded by Aetna Fire & Casualty Co.

RECORDED & RECORD VERIFIED

County Comptroller, Orange Co., Fla.

STATE OF FLORIDA - COUNTY OF ORANGE
I HEREBY CERTIFY that this is a copy of
the document as recorded in this office.
MARTHA O. HAYNIE, COUNTY COMPTROLLER
By: _____, D.C.
DATED: January 25, 1996

COUNTY COMPTROLLER ★ SEAL ★ ORANGE COUNTY, FLORIDA

APPENDIX H

Article I, s. 8, cl 9: "The Congress shall have Power to constitute Tribunals inferior to the supreme Court."

Article I, s. 8, cl. 17: "The Congress shall have Power to exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings."

Article I, s. 10, cl. 3: "No State shall, without the Consent of Congress, * * * enter into any Agreement or Compact with another State. * * * *"

Article III, s. 1: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office."

Article VI, cl. 3: "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution. * * * *"

Amendment 1: "Congress shall make no law respecting an establishment of religion, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

Amendment 5: " * * * [N]or [shall any person] be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

Amendment 9: "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Amendment 10: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Original Virginia Declaration of Rights

"**s. 1:** That all men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."

"**s. 2:** That all power is vested in, and consequently derived from, the People; that magistrates are their trustees and servants, and at all times amenable to them."

"**s. 5:** That the Legislative and Executive powers of the State should be separate and distinct from the Judicative; and, that the members of the two first may be restrained from oppression, by feeling and participating the burdens of the

people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by frequent, certain, and regular elections, in which all, or any part of the former members, to be again eligible, or ineligible, as the law shall direct."

Title 4 U.S.C.A., s. 72: "All offices attached to the seat of government shall be exercised in the District of Columbia, and not elsewhere, except as otherwise expressly provided by law."

Title 5 U.S.C.A., s. 3331: "An individual, except the President, elected or appointed to an office of honor or profit in the civil service or uniformed services, shall take the following oath: 'I, AB, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.' This section does not affect other oaths required by law."

Title 28 U.S.C.A., s. 132: "Creation and composition of district courts.--

* * * **(c)** Except as otherwise provided by law, or rule or order of court, the judicial power of a district court with respect to any action, suit or proceeding may be exercised by a single judge, who may preside alone and hold a regular or special session of court at the same time other sessions are held by other judges."

Title 28 U.S.C.A., s. 1254: "Courts of appeals; certiorari; certified questions.--

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods: **(1)** By writ of

certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree. * * * "

Title 28 U.S.C.A., s. 1746: "Unsworn declarations under penalty of perjury.--

Whenever, under any law of the United States or made pursuant to law, any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)'.

(2) If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)'.

Title 28 U.S.C.A., s. 2101: "Supreme Court; time for appeal or certiorari; docketing; stay.--

* * * **(c)** Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the

Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days."

Title 28 U.S.C.A., s. 2106: "Determination.-- The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

Title 28 U.S.C.A., s. 2201: "Creation of remedy.--

(a) In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1986, a proceeding under section 505 or 1146 of title 11, or in any civil action involving an antidumping or countervailing duty proceeding regarding a class or kind of merchandise of a free trade area country (as defined in section 516 A(f)(10) of the Tariff Act of 1930), as determined by the administering authority, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

Title 40 U.S.C.A., s. 255: "Approval of title prior to Federal land purchases; payment of title expenses; application to Tennessee Valley Authority; Federal jurisdiction over acquisitions.-- Unless the Attorney General gives prior written approval of the sufficiency of the title to land for the purpose for which the property is being acquired by the United States, public money may not be expended for the purchase of the land or any interest therein.

The Attorney General may delegate his responsibility under this section to other departments and agencies, subject to his general supervision and in accordance with regulations promulgated by him. Any Federal department or agency which has been delegated the responsibility to approve land titles under this section may request the Attorney General to render his opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of titles. Except where otherwise authorized by law or provided by contract, the expenses of procuring certificates of title or other evidences of title as the Attorney General may require may be paid out of the appropriations for the acquisition of land or out of the appropriations made for the contingencies of the acquiring department or agency. The foregoing provisions of this section shall not be construed to affect in any manner any existing provisions of law which are applicable to the acquisition of lands or interests in land by the Tennessee Valley Authority. Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

6.04 Fla. Stat. Anno.: "Jurisdiction over such lands; how ceded to the United States.-- Whenever the United States shall contract for, purchase, or acquire any land within the limits of this state for the purposes aforesaid, in either of the modes above mentioned and provided, or shall hold for such purposes lands heretofore lawfully acquired or reserved therefor, and shall desire to acquire constitutional jurisdiction over such lands for said purposes, the Governor of this state may, upon application made to him or her in writing on behalf of the United States for that purpose, accompanied by the proper evidence of said reservation, purchase, contract, or acquisition of record, describing the land sought to be ceded by convenient metes and bounds, thereupon, in the name and on behalf of this state, cede to the United States exclusive jurisdiction over the land so reserved, purchased, or acquired and sought to be ceded; the United States to hold, use occupy, own, possess, and exercise said jurisdiction over the same for the purposes aforesaid, and none other whatsoever; provided, always, that the consent aforesaid is hereby given and the cession aforesaid is to be granted and made as aforesaid, upon the express condition that this state shall retain a concurrent jurisdiction with the United States in and over the land or lands so to be ceded, and every portion thereof, so far that all process, civil or criminal, issuing under authority of this state, or of any of the courts or judicial officers thereof may be executed by the proper officers thereof, upon any person amenable to the same, within the limits and extent of lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States security to their property within said limits and extent, and exemption of the same, and of said lands from any taxation under the authority of this state while the same shall continue to be owned, held, used, and occupied by the United States for the purposes above expressed and intended, and not otherwise."

6.05 Fla. Stat. Anno.: "Transfer of title and jurisdiction over land owned by state.-- Whenever a tract of land

containing not more than four acres shall be selected by an authorized officer or agent of the United States for the bona fide purpose of erecting thereon a lighthouse, beacon, marine hospital, or other public work, and the title to the said land shall be held by the state, then on application by the said officer or agent to the governor of this state, the said executive may transfer to the United States the title to, and jurisdiction over, said land; provided, always, that the said transfer of title and jurisdiction is to be granted and made, as aforesaid, upon the express condition that this state shall retain a concurrent jurisdiction with the United States, in and over the lands so to be transferred, and every portion thereof, so far that all process, civil or criminal, issuing under authority of this state, or any of the courts or judicial officers thereof, may be executed by the proper officer thereof, upon any person amenable to the same, within the limits and extent of the lands so ceded, in like manner and to like effect as if this law had never been passed; saving, however, to the United States, security to their property within said limits or extent. The said lands shall hereafter remain the property of the United States and be exempt from taxation as long as they shall be needed for said purposes."

APPENDIX I

Omega Farris, Sherry Farris,
Gary Farris, and Elliott Rosado
Please Reply To: Non Domestic Mail
8933 Reynolds Road
Clermont, Florida USA 34711

Miguel J. Cortez, Esquire
Clerk, U.S. Court of Appeals for the Eleventh Cicuit
1st Floor, U.S. Court of Appeals Bldg.
56 Forsyth Street, N.W.
Atlanta, Georgia 30303-3147

DATE: August 29, 1995.

Re: Elliott Rosado, et al. v. Joseph V. Curtis, et al.
(11th Cir. Nos. 95-2387, 2388)

Dear Mr. Cortez:

We are enclosing the Original and three copies of a motion Plaintiffs'-Appellants' Motion to strike the Defendant's-Appellee's, Internal Revenue Service Employees', answer brief, or in the alternative, to evidence the basis upon which the Defendant-Appellee has established a material issue in the record, along with a supporting declaration. Also enclosed is a certification of interested persons. As indicated on the certificate of service, a copy of the motion has been served upon the appellee's counsel, and on counsel for the co-appellees.

Please submit the enclosed motion to the Court and advise us of the action taken thereon.

Sincerely,

/s/ Omega Farris, Pro Se /s/ Sherry Farris, Pro Se

/s/ Elliott Rosado, Pro Se/s/ Gary Farris, Pro se

Enclosures
cc: Loretta C. Argrett
Gary A. Allen
Charles R. Wilson
U.S. Department of Justice, Tax Division
P.O.Box 502, Washington, D.C. 20044

IN THE U. S. COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

ELLIOT ROSADO v. JOSEPH V. CURTIS
Dkt No. 95-2387, and 95-2388

Pursuant to Eleventh Circuit Rule 26.1, the following is an alphabetical list of the trial judge, attorneys, persons, firms, partnerships and corporations with any known interest in the outcome of this appeal:

1. Ann Reid, Trial Attorney, Tax Division, United States of America Department of Justice;
2. Attorney General, and the Administrator of General Services (Archivist of the United States), jointly, where E. O. 10530 on the authority vested in the President of the United States by Title 3 U.S.C., s. 301 which, in part, delegated jointly to them the duty to determine what agency rules/ regulations have the force and effect of law given such agency is subject to the Federal A. P. A. at Title 44 U.S.C., ss. 1505(a), (b), 1506, 1510(a), (f) pursuant to Title 1 C.F.R., Parts 1-3, 5-10, 15-18, 20-22 (particularly 18.12 and 21.21);
3. Congress of the United States of America;
4. Charles R. Wilson, attorney for defendant-appellee;

5. Bureaus of Alcohol, Tobacco and Firearms, Agency under the Treasury department of the United States of America;
6. Dale F. Hart, defendant-appellee;
7. Elliott Rosado, plaintiff-appellant, Pro Se;
8. Gary Farris, plaintiff-appellant, Pro Se;
9. Gary R. Allen, attorney for defendant-appellee;
10. Honorable G. Kendall Sharp, trial judge, U. S. District Court, Middle District of Florida;
11. Internal Revenue Service, Executive Administrative Agency, of the United States of America;

C-1 of C-2

12. John Doe # 1-10, defendant-appellee;
13. Jane Doe # 1-10, defendant-appellee;
14. Joe F. Roach, defendant-appellee;
15. John E. Steele, defendant-appellee;
16. Joseph V. Curtis, defendant-appellee;
17. Loretta C. Argrett, attorney for defendant-appellee;
18. Linda Julin McNamara, Assistant;
19. Margaret A. Weiss, defendant-appellee;
20. Margaret Milner Richardson, Commissioner of I. R. S.
21. Michael A. Cauley, Assistant of the United States of America Attorney;
22. Orland D. Smith, defendant-appellee;
23. Omega Farris, plaintiff-appellant;
24. Patricia E. Dorman, defendant-appellee;
25. Patirica M. Bowman, Attorney, Appellate Section, Tax Division of the United States of America Department of Justice;
26. Robert E. Miller, attorney for Joe F. Roach, defendant-appellee;
27. Robert L. Welsh, Trial Attorney, Civil Trial Section, Southern Region, Texas Division, United States of America Department of Justice;
28. Roslyn A. Russell, defendant-appellee;
29. Treasury Department of the United States of America;

30. Sherry Farris, plaintiff-appellant, Pro-Se;
31. Steven Shapiro, Chief, Civil Trial Section, Souther Region, Texas Division, United States of America Departmen: of Justice.

C2 of C2

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELLIOTT ROSADO, OMEGA FARRIS,)
GARY FARRIS, and SHERRY FARRIS,)
Plaintiffs-Appellants,)
)
v.)
)
JOSEPH V. CURTIS, JOHN E. STEELE,)
PATRICIA E. DORMAN, ROSLYN A.)
RUSSELL, JOE F. ROACH, MARGARET)
A. WEISS, ORLAND D. SMITH,)
DALE F. HART, JOHN DOE #1-10,)
JANE DOE #1-10,)
Defendants-Appellees.)
_____/

CASE NO.: 95-2387 & 95-2388
DC DKT NO.: 94-0059-CIV-ORL-18

NOTICE OF MOTION

PLEASE TAKE NOTICE that the Plaintiffs-Appellants, ELLIOTT ROSADO, OMEGA FARRIS, GARY FARRIS, and SHERRY FARRIS, in propria persona as a Pro Se, and hereinafter called ROSADO-FARRIS, moves this Honorable Court to rule on PLAINTIFFS'- APPELLANTS' MOTION TO STRIKE THE DEFENDANTS'-APPELLEES', INTERNAL REVENUE SERVICE EMPLOYEES', ANSWER BRIEF, OR, IN THE

ALTERNATIVE, TO EVIDENCE THE BASIS UPON WHICH THE DEFENDANTS'-APPELLEES' HAVE ESTABLISHED A MATERIAL ISSUE IN THE RECORD, which shall be disposed of without oral argument by the Honorable Three Judge Panel pursuant to Fed.R.App.P. 27(a) the above-styled court, in Chambers, in the U. S. Court of Appeals for the Eleventh Circuit, Atlanta, Georgia on September 29, 1995, or as soon thereafter as ROSADO-FARRIS may be heard, and pursuant to Fed.R.App.P. 27(c), it seems to ROSADO-FARRIS that the motion herein is dispositive of the appellate action before this court so as to require a ruling by the court and not a single judge which cannot determine an appeal.

PLEASE GOVERN YOURSELVES ACCORDINGLY.

DATED this 29th day of August, 1995.

/s/ Omega Farris, Pro Se /s/ Sherry Farris, Pro Se

/s/ Elliott Rosado, Pro Se/s/ Gary Farris, Pro SE
Non Domestic Mail
8933 Reynolds Road
Clermont, Florida
USA 34711

We HEREBY CERTIFY that a true and correct copy of the foregoing notice of motion, motion, ceticicate of intereted persons, has been sent by U.S. Mail, first class postage prepaid, this 29th day of August, 1995, addressed to the following:

Loretta C. Argrett, Gary R. Allen, Patricia M. Bowman
U.S.A. Department of Justice, Tax Division
P.O. Box 502
Washingtong, D.C. 200044

Charls R. Wilson, Tamra Phipps, Linda Julin Mcnamara
United States Attorney

Robert TimerlakeBuilding
Room 400
500 Zack Street
Tampa, Florida 33602

Robert E. Miller, Esq.
MILLER & GRACE, P. A.
Raintree Office Park
990 Douglas Avenue, Suite 102
Altamonte Springs, FL 32714

/s/ Omega Farris, Pro Se /s/ Sherry Farris, Pro Se

/s/ Elliott Rosado, Pro Se/s/ Gary Farris, Pro Se
Non Domestic Mail
8933 Reynolds Road
Clermont, Florida
USA 34711

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELLIOTT ROSADO, OMEGA FARRIS,)
GARY FARRIS, and SHERRY FARRIS,)
Plaintiffs-Appellants,)
)
v.)
)
JOSEPH V. CURTIS, JOHN E. STEELE,)
PATRICIA E. DORMAN, ROSLYN A.)
RUSSELL, JOE F. ROACH, MARGARET)
A. WEISS, ORLAND D. SMITH,)
DALE F. HART, JOHN DOE #1-10,)
JANE DOE #1-10,)
Defendants-Appellees.)
_____/

CASE NO.: 95-2387 & 95-2388
DC DKT NO.: 94-0059-CIV-ORL-18

PLAINTIFFS'-APPELLANTS' MOTION TO STRIKE THE DEFENDANTS'-APPELLEES', INTERNAL REVENUE SERVICE EMPLOYEES', ANSWER BRIEF, OR, IN THE ALTERNATIVE, TO EVIDENCE THE BASIS UPON WHICH THE DEFENDANTS-APPELLEES HAVE ESTABLISHED A MATERIAL ISSUE IN THE RECORD

COMES NOW, the Plaintiffs-Appellants, ELLIOTT ROSADO, OMEGA FARRIS, GARY FARRIS, and SHERRY FARRIS, in propria persona as a Pro Se, and hereinafter called ROSADO-FARRIS, to Request to this Honorable Court to Grant the **PLAINTIFFS'-APPELLANTS' MOTION TO STRIKE THE DEFENDANTS'-APPELLEES', INTERNAL REVENUE SERVICE EMPLOYEES', ANSWER BRIEF, OR, IN THE ALTERNATIVE, TO EVIDENCE THE BASIS UPON WHICH THE DEFENDANTS-APPELLEES HAVE ESTABLISHED A MATERIAL ISSUE IN THE RECORD,** and pursuant to Fed.R.App.P. 47 which provides in pertinent part that "[i]n all cases not provided for by rule, the courts of appeal

may regulate their practice in any manner not inconsistent with these rules", and pursuant to Fed.R.Evid. 1101(a) which provides in pertinent part that "[t]hese rules apply to the * * * United States courts of appeals. * * * *", ROSADO-FARRIS moves this Honorable Court to grant the motion herein and in support ROSADO-FARRIS aver the following as grounds:

*

*

*

I.
JURISDICTIONAL DEFECTS

*
*
*

5 of 46

*
*
*

II.
CULPABILITY OF MISCONDUCT AS FRAUDULENT MISREPRESENTATION AS VIOLATIONS OF TITLE 18 U.S.C., ss. 4, 1001, 1621, 1622

"In this appeal, the Secretary of the Treasury, as appellant, challenges that portion of the District Court's order holding the domestic financial transaction reporting requirements of Title II to violate the Fourth Amendment. The Government contends that the District Court erred in holding these provisions of Title II to be unconstitutional on their face, without considering the actual implementation of the statute by the Treasury Regulations. The Government urges that since only those who violate these regulations may incur civil or criminal penalties, it is the actual regulations issued by the Secretary of the Treasury, and not the broad authorizing language of the statute, which are to be tested against the standards of the Fourth Amendment; and that when so tested they are valid." ***CALIFORNIA BANKERS ASSN. v. SHULTZ,* 416 US 21, 43-44, 39 L.Ed.2d 812, 830, 94 S.Ct. 1494 (1974).** It seems to ROSADO-FARRIS that this is conclusive proof of the culpability of the Government with respect to those representing the IRS

EMPLOYEES as counsel as well as the IRS EMPLOYEES themselves in that they knew or should have known since ***CALIFORNIA BANKERS ASSN. v. SHULTZ*** was decided that allegations or averments of 4th Amendment violations must be tested by determining the adequacy of the implementation of the statute by the regulations as to 4th Amendment standards, and it has been a precedent for the 11th Circuit since this appellate court said in ***UNITED STATES v. TWEEL,* 550 F.2d 297, 299 (CA5 SD Fla 1977),** that "the record here must disclose some affirmative misrepresentation to establish the existence of fraud, and the showing must be clear and convincing. (Footnote omitted) PRUDDEN, *supra,* p. 1033. The PRUDDEN court also stated that: Silence can only be equated with fraud where there is a legal or moral duty to speak or where an inquiry left unanswered would be intentionally misleading, *Supra,* p. 1032.", and in their pleadings and in their Answer Brief the IRS EMPLOYEES never controvert a single

12 of 46

case authority that ROSADO-FARRIS has consistently used to support their controlling issue of law in their complaint, in their pleadings, and in this appeal but the IRS EMPLOYEES have remained silent in this respect within the meaning of ***TWEEL,*** and this hereinafter is referred to as the executive administrative agency enforcement action agents' culpability.

*
*
*

13 of 46

*
*
*

III.

FEDERAL RULES OF EVIDENCE AS GROUNDS FOR STRIKING THE IRS EMPLOYEES' ANSWER BRIEF

*
*
*

32 of 46

*
*
*

WHEREFORE, * * * .
Dated: this 28th day of August, 1995.

43 of 46

/s/ Omega Farris, Pro Se /s/ Sherry Farris, Pro Se

/s/ Elliott Rosado, Pro Se/s/ Gary Farris, Pro Se
Non Domestic Mail
8933 Reynolds Road
Clermont, Florida
USA 34711

44 of 46

DECLARATION
Pursuant to Title 28 U.S.C., section 1746(1)

We, the Plaintiffs-Appellants, Elliott Rosado, Omega Farris, Gary Farris, and Sherry Farris, are capable of making this declaration as PLAINTIFFS'- APPELLANTS' MOTION TO STRIKE THE DEFENDANTS'-APPELLEES',

INTERNAL REVENUE SERVICE EMPLOYEES', ANSWER BRIEF, OR, IN THE ALTERNATIVE, TO EVIDENCE THE BASIS UPON WHICH THE DEFENDANTS- APPELLEES HAVE ESTABLISHED A MATERIAL ISSUE IN THE RECORD, and that We, each and every one, the Plaintiffs-Appellants, are personally acquainted with the facts herein stated, and state that We, each and every one, are over the age of eighteen, and the following facts are within our personal knowledge and if We are called as a witness, We, the Plaintiffs-Appellants, each and every one, could testify thereto. We, the Plaintiffs-Appellants, Elliott Rosado, Omega Farris, Gary Farris, and Sherry Farris, declare under penalty of perjury under the laws of the United States of America, pursuant to Title 28 U.S.C., s. 1746(1), that the foregoing is true and correct to the best of our knowledge and belief. And if we are called as a witness we could testify thereto -- each and every one of us.

Signed and date this 29th day of August, 1995.

/s/ Omega Farris, Pro Se /s/ Sherry Farris, Pro Se

/s/ Elliott Rosado, Pro Se/s/ Gary Farris, Pro SE
Non Domestic Mail
8933 Reynolds Road
Clermont, Florida
USA 34711

45 of 46

WE HEREBY CERTIFY that a true and correct copy of the foregoing notice of motion, motion, certificate of interested persons, has been made and sent by U.S. Mail, first class postage prepaid, this 29th day of August, 1995, addressed to the following:

Loretta C. Argrett, Gary R. Allen, Patricia M. Bowman
U.S.A. Department of Justice, Tax Division
P.O. Box 502
Washington, D.C. 20044

Charls R. Wilson, Tamra Phipps, Linda Julin Mcnamara
United States Attorney
Robert TimerlakeBuilding
Room 400
500 Zack Street
Tampa, Florida 33602

Robert E. Miller, Esq.
MILLER & GRACE, P. A.
Raintree Office Park
990 Douglas Avenue, Suite 102
Altamonte Springs, FL 32714

/s/ Omega Farris, Pro Se /s/ Sherry Farris, Pro Se

/s/ Elliott Rosado, Pro Se/s/ Gary Farris, Pro Se
Non Domestic Mail
8933 Reynolds Road
Clermont, Florida
USA 34711

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ELLIOTT ROSADO, OMEGA FARRIS,)
GARY FARRIS, and SHERRY FARRIS,)
Plaintiffs-Appellants,)
)
v.)
)
JOSEPH V. CURTIS, JOHN E. STEELE,)

PATRICIA E. DORMAN, ROSLYN A. RUSSELL, JOE F. ROACH, MARGARET A. WEISS, ORLAND D. SMITH, DALE F. HART, JOHN DOE #1-10, JANE DOE #1-10,
Defendants-Appellees.

CASE NO.: 95-2387 & 95-2388
DC DKT NO.: 94-0059-CIV-ORL-18

ORDER

This cause came on without an oral argument on this _____ day of _____, 1995, upon the Plaintiffs'-Appellants', ELLIOTT ROSADO's, OMEGA FARRIS's, GARY FARRIS's, and SHERRY FARRIS's, **PLAINTIFFS'- APPELLANTS' MOTION TO STRIKE THE DEFENDANTS'-APPELLEES', INTERNAL REVENUE SERVICE EMPLOYEES', ANSWER BRIEF, OR, IN THE ALTERNATIVE, TO EVIDENCE THE BASIS UPON WHICH THE DEFENDANTS-APPELLEES HAVE ESTABLISHED A MATERIAL ISSUE IN THE RECORD**, and the Court, having reviewed the motion, pleadings, and other papers on file, and being otherwise duly authorized of the premises, it is thereupon **ORDERED, ADJUDGED, AND DECREED** that the Plaintiffs'-Appellants', ELLIOTT ROSADO's, OMEGA FARRIS's, GARY FARRIS's, and SHERRY FARRIS's, Motion be, and hereby is, **GRANTED.**

DONE AND ORDERED in chambers in the U. S. Court of Appeals for the Eleventh Circuit in Atlanta, Georgia this _____ day of _____, 1995.

THREE JUDGE PANEL:

JUDGE

JUDGE

JUDGE